

Title 43  
NATURAL RESOURCES  
Part I. Office of the Secretary  
Chapter 7. Coastal Management

Subchapter A. Definitions

§700. Definitions

*Administrator*—the administrator of the Coastal Management Division of the Department of Natural Resources.

*Advanced Mitigation Project*—a project implemented to create, restore, protect, and/or enhance wetlands for the purpose of producing ecological values, measured as average annual habitat units or cumulative habitat units (advanced mitigation credits). Such projects must be approved by the secretary prior to implementation, and the advanced mitigation credits shall have limited utility for the purpose of compensating for the ecological values lost due to a permitted activity.

*Affected Landowner*—the owner of the land on which a proposed activity, which would result in an unavoidable net loss of ecological value, is to occur.

*Affected Parish*—the parish in which a proposed activity, which would result in an unavoidable net loss of ecological value, is to occur.

*After-the-Fact Permit*—a coastal use permit which is issued after the commencement of a use. Such a permit may only be issued after all legal issues resulting from the commencement of a use without a coastal use permit have been resolved.

*Alterations of Waters Draining in Coastal Waters*—those uses or activities that would alter, change, or introduce polluting substances into runoff and thereby modify the quality of coastal waters. Examples include water control impoundments, upland and water management programs, and drainage projects from urban, agricultural and industrial developments.

*Approved Local Program*—a local coastal management program which has been and continues to be approved by the secretary pursuant to 214.28 of the State and Local Coastal Resources Management Act (SLCRMA).

*Average Annual Habitat Unit*—a unit of measure of ecological value; average annual habitat units are calculated by the formula: (sum of cumulative habitat units for a given project scenario) / (project years).

*Best Practical Techniques*—those methods or techniques which would result in the greatest possible minimization of the adverse impacts listed in §701.G and in specific guidelines applicable to the proposed use. Those methods or techniques shall be the best methods or techniques which are in use in the industry or trade or among practitioners of the use, and which are feasible and practical for utilization.

*Coastal Use Permit*—a permit required by 214.30 of the SLCRMA. The term does not mean or refer to, and is in addition to, any other permit or approval required or established pursuant to any other constitutional provision or statute.

*Coastal Water Dependent Uses*—those which must be carried out on, in or adjacent to coastal water areas or wetlands because the use requires access to the water body or wetland or requires the consumption, harvesting or other direct use of coastal resources, or requires the use of coastal water in the manufacturing or transportation of goods. Examples include surface and subsurface mineral extraction, fishing, ports and necessary supporting commercial and industrial facilities, facilities for the construction, repair and maintenance of vessels, navigation projects, and fishery processing plants.

*Coastal Waters*—those bays, lakes, inlets, estuaries, rivers, bayous, and other bodies of water within the boundaries of the coastal zone which have measurable seawater content (under normal weather conditions over a period of years).

*Coastal Zone*—the term "coastal zone" shall have the same definition as provided in 214.24 of the SLCRMA.

*Compensatory Mitigation*—replacement, substitution, enhancement, or protection of ecological values to offset anticipated losses of ecological values caused by a permitted activity.

*Conservation Servitude*—as defined at R.S. 9:1272.(1), means a nonpossessory interest of a holder in immovable property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of immovable property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, archaeological, or cultural aspects of unimproved immovable property.

*Contaminant*—an element causing pollution of the environment that would have detrimental effects on air or water quality or on native floral or faunal species.

*Corps*—the U.S. Army Corps of Engineers.

*Cumulative Impacts*—impacts increasing in significance due to the collective effects of a number of activities.

*Cumulative Habitat Unit*—a unit of measure of ecological value; for each time interval within the project years, cumulative habitat units are calculated by the formula:  $CHUs = (T_2 - T_1) \times \left\{ \left[ (A_1 \times HSI_1 + A_2 \times HSI_2) / 3 \right] + \left[ (A_2 \times HSI_1 + A_1 \times HSI_2) / 6 \right] \right\}$ , where  $T_1$  = first year of time interval,  $T_2$  = last year of time interval,  $A_1$  = acres of habitat at beginning of time interval,  $A_2$  = acres of habitat at end of time interval,  $HSI_1$  = habitat suitability index at beginning of time interval, and  $HSI_2$  = habitat suitability index at end of time interval; the source of this formula is the U.S. Fish and Wildlife Service's Ecological Services Manual 102, Habitat Evaluation Procedures.

*Department*—the Department of Natural Resources.

*Development Levees*—those levees and associated water control structures whose purpose is to allow control of water levels within the area enclosed by the levees to facilitate drainage or development within the leveed areas. Such levee systems also commonly serve for hurricane or flood protection, but are not so defined for purposes of these guidelines.

*Direct and Significant Impact*—a direct and significant modification or alteration in the physical or biological characteristics of coastal waters which results from an action or series of actions caused by man.

*Ecological Value*—the ability of an area to support vegetation and fish and wildlife populations.

*Endangered Species*—as defined in the Endangered Species Act, as amended, any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary of the U.S. Department of Interior to constitute a pest whose protection under the provisions of the Endangered Species Act, as amended, would present an overwhelming and overriding risk to man.

*Expectable Adverse Conditions*—natural or man-made hazardous conditions which can be expected or predicted to occur at regular intervals. Included are such events as 125 mile per hour hurricanes and associated tides, 100 year floods and reasonably probable accidents.

*Fastlands*—lands surrounded by publicly-owned, maintained, or otherwise validly existing levees or natural formations as of January 1, 1979, or as may be lawfully constructed in the future, which levees or natural formations would normally prevent activities, not to include the pumping of water for drainage purposes, within the surrounded area from having direct and significant impacts on coastal waters.

*Feasible and Practical*—those locations, methods and/or practices which are of established usefulness and efficiency and allow the use or activity to be carried out successfully.

*Federal Advisory Agencies*—include, but are not limited to, the U.S. Fish and Wildlife Service, the U.S. National Marine Fisheries Service, the U.S. Environmental Protection Agency, and the U.S. Natural Resources Conservation Service.

*Force Majeure*—an act of God, war, blockade, lightning, fire, storm, flood, and any other cause which is not within the control of the party claiming force majeure.

*Future with Project Scenario*—portrayal of anticipated changes to ecological values (i.e., habitat values and wetland acreage) throughout the project years in a situation where a given project would be implemented.

*Future without Project Scenario*—portrayal of anticipated changes to ecological values (i.e., habitat values and wetland acreage) throughout the project years in a situation where a given project would not be implemented.

*Geologic Review Procedure*—a process by which alternative methods, including alternative locations, for oil and gas exploration are evaluated on their environmental, technical, and economic merits on an individual basis; alternative methods, including alternative locations, of oil and gas production and transmission activities which are specifically associated with the proposed exploration activity shall also be evaluated in this process. These alternative methods, including alternative locations, are presented and evaluated at a meeting by a group of representatives of the involved parties. A geologic review group is composed, at a minimum, of representatives of the applicant, a petroleum geologist and a petroleum engineer representing the Coastal Management Division and/or the New Orleans District Corps of Engineers, and a representative of the Coastal Management Division Permit Section, and may include, but is not limited to, representatives of the Louisiana Department of Wildlife and Fisheries, the Louisiana Department of Environmental Quality, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. National Marine Fisheries Service, and the U.S. Environmental Protection Agency.

*Governmental Body*—any public department, agency, bureau, authority, or subdivision of the government of the United States or the state of Louisiana and shall include parishes and municipalities and subdivisions thereof and those governmental agencies constitutionally established.

*Guidelines*—those rules and regulations adopted pursuant to 214.27 of the SLCRMA.

*Habitat*—the natural environment where a plant or animal population lives.

*Habitat Types*—the general wetland vegetative communities which exist in the Louisiana Coastal Zone, including fresh marsh, intermediate marsh, brackish marsh, saline marsh, fresh swamp, and bottomland hardwoods.

*Holder*—as defined at R.S. 9:1272.(2), means (1) a governmental body empowered to hold an interest in immovable property under the laws of this state or the United States; or (2) a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of immovable property, assuring the availability of immovable property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, archaeological, or cultural aspects of unimproved immovable property.

*Hurricane or Flood Protection Levees*—those levees and associated water control structures whose primary purpose is to prevent occasional surges of flood or storm generated high water. Such levee systems do not include those built to permit drainage or development of enclosed wetland areas.

*Hydrologic and Sediment Transport Modifications*—those uses and activities intended to change water circulation, direction of flow, velocity, level, or quality or quantity of transported sediment. Examples include locks, water gates, impoundments, jetties, groins, fixed and variable weirs, dams, diversion pipes, siphons, canals, and surface and groundwater withdrawals.

*Hydrologic Basin*—one of the nine general drainage areas within the Louisiana Coastal Zone as delineated on pages A-2 and A-3 of the Louisiana Coastal Wetlands Conservation and Restoration Plan, April 1990.

*Impoundment Levees*—those levees and associated water control structures whose primary purpose is to contain water within the levee system either for the prevention of the release of pollutants, to create fresh water reservoirs, or for management of fish or wildlife resources.

*Infrastructure*—those systems which provide needed support for human social institutions and developments, including transportation systems, public utilities, water and sewerage systems, communications, educational facilities, health services, law enforcement and emergency preparedness.

*In-lieu Permit*—those permits issued in-lieu of coastal use permits pursuant to 214.31 of the SLCRMA.

*Levees*—any use or activity which creates an embankment to control or prevent water movement, to retain water or other material, or to raise a road or other lineal use above normal or flood water levels. Examples include levees, dikes and embankments of any sort.

*Linear Facilities*—those uses and activities which result in creation of structures or works which are primarily linear in nature. Examples include pipelines, roads, canals, channels, and powerlines.

*Local Government*—a governmental body having general jurisdiction and operating at the parish level.

*Local Program*—same as approved local program.

*Marsh*—wetlands subject to frequent inundation in which the dominant vegetation consists of reeds, sedges, grasses, cattails, and other low growth.

*Minerals*—oil, gas, sulfur, geothermal, geopressured, salt, or other naturally occurring energy or chemical resources which are produced from below the surface in the coastal zone. Not included are such surface resources as clam or oyster shells, dirt, sand, or gravel.

*Mitigation*—all actions taken by a permittee to avoid, minimize, restore, and compensate for ecological values lost due to a permitted activity.

*Mitigation Bank*—an area identified, with specific measures implemented to create, restore, protect, and/or enhance wetlands, for the purpose of producing ecological values, measured as average annual habitat units or cumulative habitat units (mitigation credits). Those credits may be donated, sold, traded, or otherwise used for the purpose of compensating for the ecological values lost due to a permitted activity.

*Off-site*—not within or adjoining the area directly modified by the permitted activity and not directly related to implementation of the permitted activity.

*Oil, Gas and Other Mineral Activities*—those uses and activities which are directly involved in the exploration, production, and refining of oil, gas, and other minerals. Examples include geophysical surveying, establishment of drill sites and access to them, drilling, on site storage of supplies, products and waste materials, production, refining, and spill cleanup.

*On-site*—within or adjoining the area directly modified by the permitted activity or directly related to implementation of the permitted activity.

*Overriding Public Interest*—the public interest benefits of a given activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, as in the case of certain mineral extraction, production, and transportation activities or construction of flood protection facilities critical for protection of existing infrastructure.

*Particular Areas*—areas within the coastal zone of a parish with an approved local program which have unique

and valuable characteristics requiring special management procedures. Such areas shall be identified, designated, and managed by the local government following procedures consistent with those for special areas.

*Permit*) a coastal use permit, or an in-lieu permit.

*Permitting Body*—either the Department of Natural Resources or a local government with an approved local program with authority to issue, or that has issued, a coastal use permit authorized by the SLCRMA.

*Person*—any natural individual, partnership, association, trust, corporation, public agency or authority, governmental body, or any other legal or juridical person created by law.

*Project Years*—the anticipated number of years that the proposed activity would have a negative or positive impact on the ecological value of the site. Project years shall be 20 years for marsh habitats and 50 years for forested habitats, unless it is clearly demonstrated by the applicant and accepted by the secretary to be shorter in duration.

*Public Hearing*—a hearing announced to the public at least 30 days in advance, at which all interested persons shall be afforded a reasonable opportunity to submit data, views or arguments, orally or in writing. At the time of the announcement of the public hearing all materials pertinent to the hearing, including documents, studies, and other data, in the possession of the party calling the hearing, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the party which conducted the hearing.

*Radioactive Wastes*—wastes containing source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

*Secondary Impact*—an impact which would (1) result from the proposed activity, (2) cause significant modifications or alterations to the physical characteristics of acreage beyond the limit of the area depicted as being altered in the accepted permit application drawings, and (3) be identified and quantified by the secretary based on an evaluation of similar and previously implemented activities.

*Secretary*—the secretary of the Department of Natural Resources, or his designee.

*Sediment Deposition Systems*—controlled diversions of sediment-laden water in order to initiate land building or sediment nourishment or to minimize undesirable deposition of sediment in navigation channels or habitat areas. Typical activities include diversion channels, jetties, groins, or sediment pumps.

*Shoreline Modifications*—those uses and activities planned or constructed with the intention of directly or indirectly changing or preventing change of a shoreline. Examples include bulkheading, piers, docks, wharves, slips, and short canals, and jetties.

*SLCRMA*—the State and Local Coastal Resources Management Act of 1978, Act 361 of 1978 as amended, R.S. 49:214.21-214.40.

*Spoil Deposition*—the deposition of any excavated or dredged material.

*State Advisory Agencies*—include, but are not limited to, the Louisiana Department of Wildlife and Fisheries and the Louisiana Department of Environmental Quality.

*Surface Alterations*—those uses and activities which change the surface or usability of a land area or water bottom. Examples include fill deposition, land reclamation, beach nourishment, dredging (primarily areal), clearing, draining, surface mining, construction and operation of transportation, mineral, energy and industrial facilities, and industrial, commercial, and urban developments.

*Third Party Right of Enforcement*—as defined at R.S. 9:1272.(3), means a right provided in a conservation servitude to enforce any of the terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

*Toxic Substances*—those substances which, by their chemical, biological or radioactive properties, have the potential to endanger human health or other living organisms or ecosystems, by means of acute or chronic adverse effects, including poisoning, mutagenic, teratogenic, or carcinogenic effect.

*Unavoidable Net Loss of Ecological Values*—the net loss of ecological value that is anticipated to occur as the result of a permitted/authorized activity, despite all efforts, required by the guidelines, to avoid, minimize, and restore the permitted/authorized impacts.

*Uplands*—lands 5 feet or more above sea level, fastlands, or all lands outside the coastal zone.

*Use*—any use or activity within the coastal zone which has a direct and significant impact on coastal waters.

*Waste*—any material for which no use or reuse is intended and which is to be discarded.

*Waste Disposal*—those uses and activities which involve the collections, storage and discarding or disposing of any solid or liquid material. Examples include littering; landfill; open dumping; incineration; industrial waste treatment facilities; sewerage treatment; storage in pits, ponds, or lagoons; ocean dumping and subsurface disposal.

*Water or Marsh Management Plan*—a systematic development and control plan to improve and increase biological productivity, or to minimize land loss, saltwater intrusion, erosion or other such environmental problems,

or to enhance recreation.

*Wetlands—*

1. for the purposes of this Chapter except for §724, open water areas or areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions;

2. for the purposes of §724 (as defined in R.S. 49:214.41), an open water area or an area that is inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, but specifically excluding fastlands and lands more than 5 feet above sea level which occur in the designated coastal zone of the state. Wetlands generally include swamps, marshes, bogs, and similar areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21-49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995).

Subchapter B. Coastal Use Guidelines

Coastal use guidelines as approved by the House Natural Resources Committee on July 9, 1980, the Senate Natural Resources Committee on July 11, 1980, and the governor on July 24, 1980.

§701. Guidelines Applicable to all Uses

A. The guidelines must be read in their entirety. Any proposed use may be subject to the requirements of more than one guideline or section of guidelines and all applicable guidelines must be complied with.

B. Conformance with applicable water and air quality laws, standards and regulations, and with those other laws, standards and regulations which have been incorporated into the coastal resources program shall be deemed in conformance with the program except to the extent that these guidelines would impose additional requirements.

C. The guidelines include both general provisions applicable to all uses and specific provisions applicable only to certain types of uses. The general guidelines apply in all situations. The specific guidelines apply only to the situations they address. Specific and general guidelines should be interpreted to be consistent with each other. In the event there is an inconsistency, the specific should prevail.

D. These guidelines are not intended to nor shall they be interpreted so as to result in an involuntary acquisition or taking of property.

E. No use or activity shall be carried out or conducted in such a manner as to constitute a violation of the terms of a grant or donation of any lands or waterbottoms to the State or any subdivision thereof. Revocations of such grants and donations shall be avoided.

F. Information regarding the following general factors shall be utilized by the permitting authority in evaluating whether the proposed use is in compliance with the guidelines.

1. Type, nature, and location of use.
2. Elevation, soil, and water conditions and flood and storm hazard characteristics of site.
3. Techniques and materials used in construction, operation, and maintenance of use.
4. Existing drainage patterns and water regimes of surrounding area including flow, circulation, quality, quantity, and salinity; and impacts on them.

5. Availability of feasible alternative sites or methods of implementing the use.

6. Designation of the area for certain uses as part of a local program.

7. Economic need for use and extent of impacts of use on economy of locality.

8. Extent of resulting public and private benefits.

9. Extent of coastal water dependency of the use.

10. Existence of necessary infrastructure to support the use and public costs resulting from use.

11. Extent of impacts on existing and traditional uses of the area and on future uses for which the area is suited.

12. Proximity to and extent of impacts on important natural features such as beaches, barrier islands, tidal passes, wildlife and aquatic habitats, and forest lands.

13. The extent to which regional, state, and national interests are served including the national interest in resources and the siting of facilities in the coastal zone as identified in the coastal resources program.

14. Proximity to, and extent of impacts on, special areas, particular areas, or other areas of particular concern of the state program or local programs.

15. Likelihood of, and extent of impacts of, resulting secondary impacts and cumulative impacts.

16. Proximity to and extent of impacts on public lands or works, or historic, recreational, or cultural resources.

17. Extent of impacts on navigation, fishing, public access, and recreational opportunities.

18. Extent of compatibility with natural and cultural setting.

19. Extent of long term benefits or adverse impacts.

G. It is the policy of the coastal resources program to avoid the following adverse impacts. To this end, all uses and activities shall be planned, sited, designed, constructed, operated, and maintained to avoid to the maximum extent practicable significant:

1. Reductions in the natural supply of sediment and nutrients to the coastal system by alterations of freshwater flow.

2. Adverse economic impacts on the locality of the use and affected governmental bodies.

3. Detrimental discharges of inorganic nutrient compounds into coastal waters.

4. Alterations in the natural concentration of oxygen in coastal waters.

5. Destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and waterbottoms, beaches, dunes, barrier islands, and other natural biologically valuable areas or protective coastal features.

6. Adverse disruption of existing social patterns.

7. Alterations of the natural temperature regime of coastal waters.

8. Detrimental changes in existing salinity regimes.

9. Detrimental changes in littoral and sediment transport processes.

10. Adverse effects of cumulative impacts.

11. Detrimental discharges of suspended solids into coastal waters, including turbidity resulting from dredging.

12. Reductions or blockage of water flow or natural circulation patterns within or into an estuarine system or a wetland forest.

13. Discharges of pathogens or toxic substances into coastal waters.

14. Adverse alteration or destruction of archaeological, historical, or other cultural resources.

15. Fostering of detrimental secondary impacts in undisturbed or biologically highly productive wetland areas.

16. Adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands.

17. Adverse alteration or destruction of public parks, shoreline access points, public works, designated recreation areas, scenic rivers, or other areas of public use and concern.

18. Adverse disruptions of coastal wildlife and fishery migratory patterns.

19. Land loss, erosion, and subsidence.

20. Increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards.

21. Reduction in the long term biological productivity of the coastal ecosystem.

H. In those guidelines in which the modifier "maximum extent practicable" is used, the proposed use is in compliance with the guideline if the standard modified by the term is complied with. If the modified standard is not complied with, the use will be in compliance with the guideline if the permitting authority finds, after a systematic consideration of all pertinent information regarding the use, the site and the impacts of the use as set forth in Subsection F above, and a balancing of their relative significance, that the benefits resulting from the proposed use would clearly outweigh the adverse impacts resulting from noncompliance with the modified standard and there are no feasible and practical alternative locations, methods, and practices for the use that are in compliance with the modified standard and:

1. significant public benefits will result from the use, or;

2. the use would serve important regional, state, or national interests, including the national interest in resources and the siting of facilities in the coastal zone identified in the coastal resources program, or;

3. the use is coastal water dependent.

The systematic consideration process shall also result in a determination of those conditions necessary for the use to be in compliance with the guideline. Those conditions shall assure that the use is carried out utilizing those locations, methods, and practices which maximize conformance to the modified standard; are technically, economically, environmentally, socially, and legally feasible and practical; and minimize or offset those adverse impacts listed in §701.G and in the Subsection at issue.

I. Uses shall to the maximum extent practicable be designed and carried out to permit multiple concurrent uses which are appropriate for the location and to avoid unnecessary conflicts with other uses of the vicinity.

J. These guidelines are not intended to be, nor shall they be, interpreted to allow expansion of governmental authority beyond that established by R.S. 49:214.21-49:214.41, as amended; nor shall these guidelines be interpreted so as to require permits for specific uses legally commenced or established prior to the effective date of the coastal use permit program nor to normal maintenance or repair of such uses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### §703. Guidelines for Levees

A. The leveeing of unmodified or biologically productive wetlands shall be avoided to the maximum extent practicable.

B. Levees shall be planned and sited to avoid segmentation of wet-land areas and systems to the maximum extent practicable.

C. Levees constructed for the purpose of developing or otherwise changing the use of a wetland area shall be avoided to the maximum extent practicable.

D. Hurricane and flood protection levees shall be located at the nonwetland/wetland interface or landward to the maximum extent practicable.

E. Impoundment levees shall only be constructed in wetland areas as part of approved water or marsh management projects or to prevent release of pollutants.

F. Hurricane or flood protection levee systems shall be designed, built and thereafter operated and maintained utilizing best practical techniques to minimize disruptions of existing hydrologic patterns, and the interchange of water, beneficial nutrients, and aquatic organisms between enclosed wetlands and those outside the levee system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### §705. Guidelines for Linear Facilities

A. Linear use alignments shall be planned to avoid adverse impacts on areas of high biological productivity or irreplaceable resource areas.

B. Linear facilities involving the use of dredging or filling shall be avoided in wetland and estuarine areas to the maximum extent practicable.

C. Linear facilities involving dredging shall be of the minimum practical size and length.

D. To the maximum extent practicable, pipelines shall be installed through the "push ditch" method and the ditch backfilled.

E. Existing corridors, rights-of-way, canals, and streams shall be utilized to the maximum extent practicable for linear facilities.

F. Linear facilities and alignments shall be, to the maximum extent practicable, designed and constructed to permit multiple uses consistent with the nature of the facility.

G. Linear facilities involving dredging shall not traverse or adversely affect any barrier island.

H. Linear facilities involving dredging shall not traverse beaches, tidal passes, protective reefs, or other natural gulf shoreline unless no other alternative exists. If a beach, tidal pass, reef, or other natural gulf shoreline must be traversed for a non-navigation canal, they shall be restored at least to their natural condition immediately upon completion of construction. Tidal passes shall not be permanently widened or deepened except when necessary to conduct the use. The best available restoration techniques which improve the traversed area's ability to serve as a shoreline shall be used.

I. Linear facilities shall be planned, designed, located, and built using the best practical techniques to minimize disruption of natural hydrologic and sediment transport patterns, sheet flow, and water quality and to minimize adverse impacts on wetlands.

J. Linear facilities shall be planned, designed, and built using the best practical techniques to prevent bank slumping and erosion, and saltwater intrusion, and to minimize the potential for inland movement of storm-generated surges. Consideration shall be given to the use of locks in navigation canals and channels which connect more saline areas with fresher areas.

K. All nonnavigation canals, channels, and ditches which connect more saline areas with fresher areas shall be plugged at all waterway crossings and at intervals between crossings in order to compartmentalize them. The plugs

shall be properly maintained.

L. The multiple use of existing canals, directional drilling, and other practical techniques shall be utilized to the maximum extent practicable to minimize the number and size of access canals, to minimize changes of natural systems, and to minimize adverse impacts on natural areas and wildlife and fisheries habitat.

M. All pipelines shall be constructed in accordance with parts 191, 192, and 195 of Title 49 of the Code of Federal Regulations, as amended, and in conformance with the Commissioner of Conservation's Pipeline Safety Rules and Regulations and those safety requirements established by R.S. 45:408, whichever would require higher standards.

N. Areas dredged for linear facilities shall be backfilled or otherwise restored to the pre-existing conditions upon cessation of use for navigation purposes to the maximum extent practicable.

O. The best practical techniques for site restoration and revegetation shall be utilized for all linear facilities.

P. Confined and dead end canals shall be avoided to the maximum extent practicable. Approved canals must be designed and constructed using the best practical techniques to avoid water stagnation and eutrophication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### §707. Guidelines for Dredged Spoil Deposition

A. Spoil shall be deposited utilizing the best practical techniques to avoid disruption of water movement, flow, circulation, and quality.

B. Spoil shall be used beneficially to the maximum extent practicable to improve productivity or create new habitat, reduce or compensate for environmental damage done by dredging activities, or prevent environmental damage. Otherwise, existing spoil disposal areas or upland disposal shall be utilized to the maximum extent practicable rather than creating new disposal areas.

C. Spoil shall not be disposed of in a manner which could result in the impounding or draining of wetlands or the creation of development sites unless the spoil deposition is part of an approved levee or land surface alteration project.

D. Spoil shall not be disposed of on marsh, known oyster or clam reefs, or in areas of submersed vegetation to the maximum extent practicable.

E. Spoil shall not be disposed of in such a manner as to create a hindrance to navigation or fishing, or hinder timber growth.

F. Spoil disposal areas shall be designed and constructed and maintained using the best practical techniques to retain the spoil at the site, reduce turbidity, and reduce shoreline erosion when appropriate.

G. The alienation of state-owned property shall not result from spoil deposition activities without the consent of the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### §709. Guidelines for Shoreline Modification

A. Nonstructural methods of shoreline protection shall be utilized to the maximum extent practicable.

B. Shoreline modification structures shall be designed and built using best practical techniques to minimize adverse environmental impacts.

C. Shoreline modification structures shall be lighted or marked in accordance with U.S. Coast Guard regulations, not interfere with navigation, and should foster fishing, other recreational opportunities, and public access.

D. Shoreline modification structures shall be built using best practical materials and techniques to avoid the introduction of pollutants and toxic substances into coastal waters.

E. Piers and docks and other harbor structures shall be designed and built using best practical techniques to avoid obstruction of water circulation.

F. Marinas and similar commercial and recreational developments shall to the maximum extent practicable not be located so as to result in adverse impacts on open productive oyster beds, or submersed grass beds.

G. Neglected or abandoned shoreline modification structures, piers, docks, and mooring and other harbor structures shall be removed at the owner's expense, when appropriate.

H. Shoreline stabilization structures shall not be built for the purpose of creating fill areas for development unless part of an approved surface alteration use.

I. Jetties, groins, breakwaters, and similar structures shall be planned, designed, and constructed so as to avoid



to the maximum extent practicable downstream land loss and erosion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§711. Guidelines for Surface Alterations

A. Industrial, commercial, urban, residential, and recreational uses are necessary to provide adequate economic growth and development. To this end, such uses will be encouraged in those areas of the coastal zone that are suitable for development. Those uses shall be consistent with the other guidelines and shall, to the maximum extent practicable, take place only:

1. on lands five feet or more above sea level or within fast lands; or
2. on lands which have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety would not be unreasonably endangered; and
  - a. the land is already in high intensity of development use, or
  - b. there is adequate supporting infrastructure, or
  - c. the vicinity has a tradition of use for similar habitation or development.

B. Public and private works projects such as levees, drainage improvements, roads, airports, ports, and public utilities are necessary to protect and support needed development and shall be encouraged. Such projects shall, to the maximum extent practicable, take place only when:

1. they protect or serve those areas suitable for development pursuant to §711.A.; and
2. they are consistent with the other guidelines; and
3. they are consistent with all relevant adopted state, local, and regional plans.

C. Reserved.

D. To the maximum extent practicable wetland areas shall not be drained or filled. Any approved drain or fill project shall be designed and constructed using best practical techniques to minimize present and future property damage and adverse environmental impacts.

E. Coastal water dependent uses shall be given special consideration in permitting because of their reduced choice of alternatives.

F. Areas modified by surface alteration activities shall, to the maximum extent practicable, be revegetated, refilled, cleaned, and restored to their predevelopment condition upon termination of the use.

G. Site clearing shall to the maximum extent practicable be limited to those areas immediately required for physical development.

H. Surface alterations shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Alterations in wildlife preserves and management areas shall be conducted in strict accord with the requirements of the wildlife management body.

I. Surface alterations which have high adverse impacts on natural functions shall not occur, to the maximum extent practicable, on barrier islands and beaches, isolated cheniers, isolated natural ridges or levees, or in wildlife and aquatic species breeding or spawning areas, or in important migratory routes.

J. The creation of low dissolved oxygen conditions in the water or traps for heavy metals shall be avoided to the maximum extent practicable.

K. Surface mining and shell dredging shall be carried out utilizing the best practical techniques to minimize adverse environmental impacts.

L. The creation of underwater obstructions which adversely affect fishing or navigation shall be avoided to the maximum extent practicable.

M. Surface alteration sites and facilities shall be designed, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment and minimize other adverse impacts.

N. To the maximum extent practicable only material that is free of contaminants and compatible with the environmental setting shall be used as fill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§713. Guidelines for Hydrologic and Sediment Transport Modifications

A. The controlled diversion of sediment-laden waters to initiate new cycles of marsh building and sediment

nourishment shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.

B. Sediment deposition systems may be used to offset land loss, to create or restore wetland areas or enhance building characteristics of a development site. Such systems shall only be utilized as part of an approved plan. Sediment from these systems shall only be discharged in the area that the proposed use is to be accomplished.

C. Undesirable deposition of sediments in sensitive habitat or navigation areas shall be avoided through the use of the best preventive techniques.

D. The diversion of freshwater through siphons and controlled conduits and channels, and overland flow to offset saltwater intrusion and to introduce nutrients into wetlands shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.

E. Water or marsh management plans shall result in an overall benefit to the productivity of the area.

F. Water control structures shall be assessed separately based on their individual merits and impacts and in relation to their overall water or marsh management plan of which they are a part.

G. Weirs and similar water control structures shall be designed and built using the best practical techniques to prevent "cut arounds," permit tidal exchange in tidal areas, and minimize obstruction of the migration of aquatic organisms.

H. Impoundments which prevent normal tidal exchange and/or the migration of aquatic organisms shall not be constructed in brackish and saline areas to the maximum extent practicable.

I. Withdrawal of surface and ground water shall not result in saltwater intrusion or land subsidence to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### §715. Guidelines for Disposal of Wastes

A. The location and operation of waste storage, treatment, and disposal facilities shall be avoided in wetlands to the maximum extent practicable, and best practical techniques shall be used to minimize adverse impacts which may result from such use.

B. The generation, transportation, treatment, storage, and disposal of hazardous wastes shall be pursuant to the substantive requirements of the Department of Environmental Quality adopted pursuant to the provisions of R.S. 30:217, et seq.; as amended and approved pursuant to the Resource Conservation and Recovery Act of 1976 P.L. 94-580, as amended, and of the Office of Conservation for injection below surface.

C. Waste facilities located in wetlands shall be designed and built to withstand all expectable adverse conditions without releasing pollutants.

D. Waste facilities shall be designed and constructed using best practical techniques to prevent leaching, control leachate production, and prevent the movement of leachate away from the facility.

E. The use of overland flow systems for nontoxic, biodegradable wastes, and the use of sump lagoons and reservoirs utilizing aquatic vegetation to remove pollutants and nutrients shall be encouraged.

F. All waste disposal sites shall be marked and, to the maximum extent practicable, all components of waste shall be identified.

G. Waste facilities in wetlands with identifiable pollution problems that are not feasible and practical to correct shall be closed and either removed or sealed, and shall be properly revegetated using the best practical techniques.

H. Waste shall be disposed of only at approved disposal sites.

I. Radioactive wastes shall not be temporarily or permanently disposed of in the coastal zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### §717. Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters

A. Upland and upstream water management programs which affect coastal waters and wetlands shall be designed and constructed to preserve or enhance existing water quality, volume, and rate of flow to the maximum extent practicable.

B. Runoff from developed areas shall to the maximum extent practicable be managed to simulate natural water

patterns, quantity, quality, and rate of flow.

C. Runoff and erosion from agricultural lands shall be minimized through the best practical techniques.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### §719. Guidelines for Oil, Gas, and Other Mineral Activities

A. Geophysical surveying shall utilize the best practical techniques to minimize disturbance or damage to wetlands, fish and wildlife, and other coastal resources.

B. To the maximum extent practicable, the number of mineral exploration and production sites in wetland areas requiring floatation access shall be held to the minimum number, consistent with good recovery and conservation practices and the need for energy development, by directional drilling, multiple use of existing access canals, and other practical techniques.

C. Exploration, production, and refining activities shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Mineral operations in wildlife preserves and management areas shall be conducted in strict accordance with the requirements of the wildlife management body.

D. Mineral exploration and production facilities shall be to the maximum extent practicable designed, constructed, and maintained in such a manner to maintain natural water flow regimes, avoid blocking surface drainage, and avoid erosion.

E. Access routes to mineral exploration, production, and refining sites shall be designed and aligned so as to avoid adverse impacts on critical wildlife and vegetation areas to the maximum extent practicable.

F. Drilling and production sites shall be prepared, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment.

G. All drilling activities, supplies, and equipment shall be kept on barges, on drilling rigs, within ring levees, or on the well site.

H. Drilling ring levees shall to the maximum extent practicable be replaced with small production levees or removed entirely.

I. All drilling and production equipment, structures, and storage facilities shall be designed and constructed utilizing best practical techniques to withstand all expectable adverse conditions without releasing pollutants.

J. Mineral exploration, production, and refining facilities shall be designed and constructed using best practical techniques to minimize adverse environmental impacts.

K. Effective environmental protection and emergency or contingency plans shall be developed and complied with for all mineral operations.

L. The use of dispersants, emulsifiers, and other similar chemical agents on oil spills is prohibited without the prior approval of the Coast Guard or Environmental Protection Agency on-scene coordinator, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan.

M. Mineral exploration and production sites shall be cleared, revegetated, detoxified, and otherwise restored as near as practicable to their original condition upon termination of operations to the maximum extent practicable.

N. The creation of underwater obstructions which adversely affect fishing or navigation shall be avoided to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### Subchapter C. Coastal Use Permits and Mitigation

##### §723. Rules and Procedures for Coastal Use Permits

###### A. General

1. Coastal Use Permits. This regulation provides the requirements and procedures for the issuance, denial, renewal, modification, suspension, and revocation of coastal use permits and general coastal use permits.

2. Permit Requirement. No use of state or local concern shall be commenced or carried out in the coastal zone without a valid coastal use permit or in-lieu permit unless the activity is exempted from permitting by the provisions of the SLCRMA or by Subsection B of this subheading. The following shall be considered as uses of state or local concern subject to the requirement of this Subparagraph:

- a. dredging or filling and discharges of dredged or fill material;
- b. levee siting, construction, operation, and maintenance;

- c. hurricane and flood protection facilities, including the siting, construction, operation, and maintenance of such facilities;
- d. urban developments, including the siting, construction or operation of residential, commercial, industrial, and governmental structures and transportation facilities;
- e. energy development activities, including any siting, construction, or operation of generating, processing and transmission facilities, pipeline facilities, and exploration for and production of oil, natural gas, and geothermal energy;
- f. mining activities, including surface, subsurface, and underground mining, sand or gravel mining, and shell dredging;
- g. wastewater discharge, including point and nonpoint sources;
- h. surface water control or consumption, including marsh management projects;
- i. shoreline modification projects and harbor structures;
- j. waste disposal activities;
- k. recreational developments, including siting, construction and operation of public and private recreational facilities and marinas;
- l. industrial development, including siting, construction, or operation of such facilities;
- m. any other activities or projects that would require a permit or other form of consent or authorization from the U.S. Army Corps of Engineers, the Environmental Protection Agency or the Louisiana Department of Natural Resources (see page 83 item 13 of the Louisiana Coastal Resources Program Final Environmental Impact Statement);
- n. activities which impact barrier islands, salt domes, cheniers, and beaches;
- o. drainage projects;

3. In-Lieu Permits. Coastal use permits shall not be required for the location, drilling, exploration and production of oil, gas, sulphur and other minerals subject to regulation by the Office of Conservation of the Department of Natural Resources as of January 1, 1979. The parameters and procedures of the in-lieu permit process are as provided for under existing Memorandum of Understanding between the Coastal Management Section and the Office of Conservation and the rules and procedures of the Office of Conservation.

#### B. Activities not Requiring Permits

##### 1. General

a. The following activities normally do not have direct and significant impacts on coastal waters; hence, a coastal use permit is not required, except as set forth in the following clauses:

- i. agricultural, forestry, and aquaculture activities on lands consistently used in the past for such activities;
- ii. hunting, fishing, trapping, and the preservation of scenic historic, and scientific areas and wildlife preserves;
- iii. normal maintenance or repair of existing structures including emergency repairs of damage caused by accident, fire, or the elements;
- iv. construction of a residence or camp;
- v. construction and modification of navigational aids such as channel markers and anchor buoys;
- vi. activities which do not have a direct and significant impact on coastal waters.

b. Uses and activities within the special area established by R.S. 49:214.29(c) which have been permitted by the Offshore Terminal Authority in keeping with its environmental protection plan shall not require a coastal use permit.

##### 2. Activities on Lands 5 Feet or More Above Sea Level or Within Fastlands

a. Activities occurring wholly on lands 5 feet or more above sea level or within fastlands do not normally have direct and significant impacts on coastal waters. Consequently, a coastal use permit for such uses generally need not be applied for.

b. However, if a proposed activity exempted from permitting in Subparagraph a, above, will result in discharges into coastal waters, or significantly change existing water flow into coastal waters, then the person proposing the activity shall notify the secretary and provide such information regarding the proposed activity as may be required by the secretary in deciding whether the activity is a use subject to a coastal permit.

c. Should it be found that a particular activity exempted by Subparagraph a, above, may have a direct and significant impact on coastal waters, the department may conduct such investigation as may be appropriate to ascertain the facts and may require the persons conducting such activity to provide appropriate factual information regarding the activity so that a determination may be made as to whether the activity is a use subject to a permit.

d. The secretary shall determine whether a coastal use permit is required for a particular activity. A coastal use permit will be required only for those elements of the activity which have direct and significant impacts on coastal waters.

e. The exemption described in this Section shall not refer to activities occurring on cheniers, salt domes, barrier islands, beaches, and similar isolated, raised land forms in the coastal zone. It does refer to natural ridges and levees.

### 3. Emergency Uses

a. Coastal use permits are not required in advance for conducting uses necessary to correct emergency situations.

i. Emergency situations are those brought about by natural or man-made causes, such as storms, floods, fires, wrecks, explosions, spills, which would result in hazard to life, loss of property, or damage to the environment if immediate corrective action were not taken.

ii. This exemption applies only to those corrective actions which are immediately required for the protection of lives, property, or the environment necessitated by the emergency situation.

b. Prior to undertaking such emergency uses, or as soon as possible thereafter, the person carrying out the use shall notify the secretary and the local government, if the use is conducted in a parish with an approved local program, and give a brief description of the emergency use and the necessity for carrying it out without a coastal use permit.

c. As soon as possible after the emergency situation arises, any person who has conducted an emergency use shall report on the emergency use to the approved local program or to the administrator. A determination shall be made as to whether the emergency use will continue to have direct and significant impacts on coastal waters. If so, the user shall apply for an after-the-fact permit. The removal of any structure or works occasioned by the emergency and the restoration of the condition existing prior to the emergency use may be ordered if the permit is denied in whole or in part.

### 4. Normal Maintenance and Repair

a. Normal repairs and the rehabilitation, replacement, or maintenance of existing structures shall not require a coastal use permit provided that:

i. the structure or work was lawfully in existence, currently serviceable, and in active use during the year preceding the repair, replacement or maintenance; and,

ii. the repair or maintenance does not result in an encroachment into a wetland area greater than that of the previous structure or work; and,

iii. the repair or maintenance does not involve dredge or fill activities; and

iv. the repair or maintenance does not result in a structure or facility that is significantly different in magnitude or function from the original.

b. This exemption shall not apply to the repair or maintenance of any structure or facility built or maintained in violation of the coastal management program.

c. Coastal use permits will normally authorize periodic maintenance including maintenance dredging. All maintenance activities authorized by coastal use permits shall be conducted pursuant to the conditions established for that permit. Where maintenance is performed which is not described in an applicable coastal use permit, it shall conform to this Section.

### 5. Construction of a Residence or Camp

a. The construction of a residence or a camp shall not require a coastal use permit provided that:

i. The terms shall refer solely to structures used for noncommercial and nonprofit purposes and which are commonly referred to as "single family" and not multiple family dwellings.

ii. The terms shall refer solely to the construction of one such structure by or for the owner of the land for the owner's use and not to practices involving the building of more than one such structure as in subdividing, tract development, speculative building, or recreational community development.

b. The exemption shall apply only to the construction of the structure and appurtenances such as septic fields, outbuildings, walk-ways, gazebos, small wharves, landings, boathouses, private driveways, and similar works, but not to any bulkheading or any dredging or filling activity except for small amounts of fill necessary for the structure itself and for the installation and maintenance of septic or sewerage facilities.

### 6. Navigational Aids

a. The construction and modification of navigational aids shall not require a coastal use permit.

b. The term shall include channel markers, buoys, marker piles, dolphins, piling, pile clusters, etc.; provided that the exemption does not apply to associated dredge or fill uses or the construction of mooring

structures, advertising signs, platforms, or similar structures associated with such facilities. All navigational aids constructed pursuant to this section shall conform to United State Coast Guard standards and requirements.

7. Agricultural, Forestry and Aquacultural Activities

a. Agricultural, forestry and aquacultural activities on lands consistently used in the past for such activities shall not require a coastal use permit provided that:

- i. The activity is located on lands or in waters which have been used on an ongoing basis for such purposes, consistent with normal practices, prior to the effective date of SLCRMA (Act 361 of 1978).
- ii. The activity does not require a permit from the U.S. Army Corps of Engineers and meets federal requirements for such exempted activities; and
- iii. The activity is not intended to, nor will it result in, changing the agricultural, forestry, or aquacultural use for which the land has been consistently used for in the past to another use.

b. The exemption includes but is not limited to normal agricultural, forestry, and aquacultural activities such as plowing; seeding; grazing; cultivating; insect control; fence building and repair; thinning; harvesting for the production of food, fiber and forest products; maintenance and drainage of existing farm, stock, or fish ponds; digging of small drainage ditches; or maintenance of existing drainage ditches and farm or forest roads carried out in accordance with good management practices.

8. Blanket Exemption. No use or activity shall require a coastal use permit if:

- a. The use or activity was lawfully commenced or established prior to the implementation of the coastal use permit process;
- b. The secretary determines that it does not have a direct or significant impact on coastal waters; or
- c. The secretary determines one is not required pursuant to §723.G of these rules.

C. Permit Application, Issuance, and Denial

1. General Requirements

a. Any applicant for a coastal use permit shall file a complete application with the State, or at his option, in areas subject to an approved local coastal management program, with the local government. The department will provide the application forms and instructions, including example plats and interpretive assistance, to any interested party. The staffs of the coastal management section and approved local programs shall be available for consultation prior to submission of an application and such consultation is strongly recommended. Application forms may be periodically revised to obtain all information necessary for review of the proposed project.

b. Separate applications shall be made for unrelated projects or projects involving noncontiguous parcels of property. Joint applications may be made in cases of related construction involving contiguous parcels of property.

c. Applicants for coastal use permits for uses of state concern shall include with their application filed with the State a certification that a copy of the application was forwarded by certified mail or hand delivered to the affected local parish(es) with an approved coastal management program.

d. Applicants for coastal use permits for uses of state concern, who elect to submit their application to the affected local parish(es) with an approved local coastal management program, shall include with their application a certification that a copy of the application was forwarded by certified mail or hand delivered to the State.

2. Content of Application. The application submitted shall contain the same information required for a permit from the U.S. Army Corps of Engineers and such additional information as the secretary determines to be reasonably necessary for proper evaluation of an application.

3. Fee Schedule

a. The following schedule of fees will be charged for the processing and evaluation of coastal use permit applications of state concern.

i. A nonrefundable application fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be \$20 for each application and \$20 for each request for determination.

ii. In addition to the nonrefundable application fee, the following fees will be assessed according to total volume of material disturbed for each permit issued.

(a). Proposed projects which involve fewer than 125 cubic yards of dredge or fill volume shall not be assessed additional fees.

(b). Proposed projects which involve 125 cubic yards of dredging and/or filling but less than 50,000 cubic yards shall be assessed at the rate of \$0.04 per cubic yard.

(c). Proposed projects which involve 50,000 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of \$2,000.

b. If the appropriate fees are not included along with the coastal use permit application, the application will be considered incomplete, and returned to the applicant. The application fee and additional fees, if any, should be paid separately.

c. A coastal use permit application which has been returned to the applicant by the Coastal Management Division or withdrawn by the applicant and is subsequently resubmitted shall be subject to an additional processing fee which will consist of an application fee and a permit fee if the application has undergone substantial revisions, pursuant to Subsection D.1.a of this Section.

d. Individual applications authorized under any existing or future CMD CUP general permits will be assessed only the application fee unless the secretary determines that full individual permit processing is in the public interest. If it is determined that a general CMD permit application requires full CUP processing, both the application and permit fee will be assessed.

e. Nothing contained in Paragraph 3.a-e shall affect the right of local government and parishes with approved programs to assess fees for processing and evaluating coastal use permit applications.

f. In addition to the fees identified at §723.C.3.a, the following fees related to compensatory mitigation shall be charged when appropriate pursuant to §724:

i. compensatory mitigation processing fee (§724.D);

ii. mitigation bank initial evaluation fee, mitigation bank habitat evaluation fee, mitigation bank establishment fee, and mitigation bank periodic review fee (§724.F.3);

iii. advanced mitigation project initial evaluation fee, advanced mitigation project establishment fee, advanced mitigation post-implementation habitat evaluation fee, advanced mitigation periodic review fee (§724.G.5);

iv. compensatory mitigation variance request fee (§724.K.2.h).

#### 4. Processing the Application

a. When an apparently complete application for a permit is received, the permitting body shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it.

b. Application processing will begin when an application that is apparently complete is accepted by the permitting body.

c. Within two working days of receipt of an apparently complete application by a local government with an approved program, a copy of the application and all attachments and the local government's decision as to whether the use is one of state or local concern shall be sent to the secretary.

d. Public notice as described in Paragraph 5 below, will be issued within 10 days of receipt of an apparently complete application by the secretary.

e. The permitting body shall evaluate the proposed application pursuant to Paragraph 6 below, to determine the need for a public hearing.

f. The permitting body, pursuant to Paragraph 8 below, shall either send a draft permit to the applicant for acceptance and signature or send notice of denial to the applicant within 30 days of the giving of public notice or within 15 days after the closing of the record of a public hearing, if held, whichever is later.

g. Public notice of permit decisions shall be given pursuant to Paragraph 5.a.ii below.

#### 5. Public Notice and Consideration of Public Comment

a. Public notice of the receipt of all apparently complete applications for coastal use permits shall be given by:

i. mailing a brief description of the application along with a statement indicating where a copy of the application may be inspected to any person who has filed a request to be notified of such permit applications and to all affected governmental bodies;

ii. by posting or causing to be posted a copy of the application at the location of the proposed use;

iii. by sending notice of the application to all appropriate news media in the parish or parishes in which the use would be located; and

iv. by causing the publication of notice of the application once in the official journal of the state; or for uses of local concern in parishes with approved local programs, by causing the publication of notice of the application once in the official journal of the parish.

b. Notice shall be considered given upon publication in the official journal.

c. The notice shall set forth that any comments on the proposed development shall be submitted to the permitting body within 25 days from the date of official journal publication of the notice.

d. A copy of the application will be sent to any person requesting it upon payment of a reasonable fee

to cover costs of copying, handling, and mailing, except that information of a confidential or proprietary nature shall be withheld. In the event that attachments to the application are not readily reproducible, they shall be available for inspection at the permitting office.

e. The permitting body shall consider comments received in response to the public notice in its subsequent actions on the permit application. Comments received will be made a part of the official file on the application. If comments received relate to matters within the special expertise of another governmental body, the permitting body may seek advice of that agency. If necessary, the applicant will be given the opportunity to furnish his proposed resolution or rebuttal to all objections from government agencies and other substantive adverse comments before a final decision is made on the application.

f. The secretary shall issue monthly a list of permits issued or denied during the previous month. This list will be distributed to all persons who receive the public notices.

#### 6. Public Hearings on Permit Applications

a. A public hearing may be held in connection with the consideration of an application for a new permit and when it is proposed that an existing permit be modified or revoked.

b. Any person may request in writing within the comment period specified in the public notice that a public hearing be held to consider material matters at issue in a permit application. Upon receipt of any such request, the permitting body shall determine whether the issues raised are substantial, and there is a valid public interest to be served by holding a public hearing.

c. Public hearing(s) are appropriate when there is significant public opposition to a proposed use, or there have been requests from legislators or from local governments or other local authorities, or in controversial cases involving significant economic, social, or environmental issues. The secretary or local government with an approved program has the discretion to require hearings in any particular case.

d. If the determination is made to hold a public hearing, the permitting body shall promptly notify the applicant, set a time and place for the hearing, and give public notice.

e. If a request for a public hearing has been received, and the decision is made that no hearing will be held, public notice of the decision shall be given.

#### 7. Additional Information

a. If an application is found to be incomplete or inaccurate after processing has begun or if it is determined that additional information from the applicant is necessary to assess the application adequately, processing will be stopped pending receipt of the necessary changes or information from the applicant and the processing periods provided for in Paragraph 4.d and f will be interrupted. Upon receipt of the required changes or information, a new processing period will begin.

b. If the applicant fails to respond within 30 days to any request or inquiry of the permitting body, the permitting body may advise the applicant that his application will be considered as having been withdrawn unless and until the applicant responds within 15 days of the date of the letter.

#### 8. Decisions on Permits

a. The permitting body will determine whether or not the permit should be issued. Permits shall be issued only for those uses which are consistent with the guidelines, the state program, and affected approved local programs. The secretary shall not consider the use to be consistent with the state program unless the permit includes condition(s) which, pursuant to §724, ensure the mitigation of wetland ecological values which would be lost due to the use. Permit decisions will be made only after a full and fair consideration of all information before the permitting body, and shall represent an appropriate balancing of social, environmental, and economic factors. The permitting body shall prepare a short and clear statement explaining the basis for its decision on all applications. This statement shall include the permitting body's conclusions on the conformity of the proposed use with the guidelines, the state program and approved local programs. The statement shall be dated, signed, and included in the record prior to final action on the application.

b. If the staff of the permitting body recommends issuance of the permit, the permitting body will forward two copies of the proposed permit to the applicant. A letter of transmittal to the applicant shall include the recommendations to the secretary and the anticipated date on which the application shall be presented to him for action. Unless good cause is then presented in support of changes to the permit and the conditions therein, the permit will be presented to the secretary for action in such form.

c. Final action on the permit application is the signature of the issuing official on the permit or the mailing of the letter notifying the applicant of the denial.

#### 9. Conditions of Permit

a. By accepting the permit, the applicant agrees to:



- i. carry out or perform the use in accordance with the plans and specifications approved by the permitting body;
- ii. comply with any permit conditions imposed by the permitting body;
- iii. adjust, alter, or remove any structure or other physical evidence of the permitted use if, in the opinion of the permitting body, it proves to be beyond the scope of the use as approved or is abandoned;
- iv. provide, if required by the permitting body, an acceptable surety bond in an appropriate amount to ensure adjustment, alteration, or removal should the permitting body determine it necessary;
- v. hold and save the State of Louisiana, the local government, the department, and their officers and employees harmless from any damage to persons or property which might result from the work, activity, or structure permitted;
- vi. certify that any permitted construction has been completed in an acceptable and satisfactory manner and in accordance with the plans and specifications approved by the permitting body. The permitting body may, when appropriate, require such certification be given by a registered professional engineer.
- b. The permitting body shall place such other conditions on the permit as are appropriate to ensure compliance with the coastal management program.
- c. Permitted uses subject to this Part shall be of two types, continuing and noncontinuing uses, which are defined below as follows.
  - i. Continuing uses are activities which by nature are carried out on an uninterrupted basis, examples include shell dredging and surface mining activities, projects involving maintenance dredging of existing waterways, and maintenance and repair of existing levees.
  - ii. Noncontinuing uses are activities which by nature are done on a one-time basis, examples include dredging access canals for oil and gas well drilling, implementing an approved land use alteration plan, and constructing new port or marina facilities.
- d. The term of issuance of permits shall be as follows.
  - i. The term to initiate a coastal use permit for a noncontinuing use shall be two years from the date of issuance, and the term to complete the use shall be five years from the date of issuance. The permit term for initiation may be extended pursuant to Subsection D for an additional two years. The permit term for completion may not be extended.
  - ii. The term of a coastal use permit for a continuing use shall be five years from the date of issuance. The permit term may not be extended.

#### D. Modification, Suspension or Revocation of Permits

##### 1. Modifications

- a. The terms and conditions of a permit may be modified to allow changes in the permitted use, in the plans and specifications for that use, in the methods by which the use is being implemented, or to assure that the permitted use will be in conformity with the coastal management program. Changes which would significantly increase the impacts of a permitted activity shall be processed as new applications for permits pursuant to Subsection C, not as a modification.
- b. A permit may be modified upon request of the permittee:
  - i. if mutual agreement can be reached on a modification, written notice of the modification will be given to the permittee;
  - ii. if mutual agreement cannot be reached, a permittee's request for a modification shall be considered denied.

##### 2. Suspensions

- a. The permitting body may suspend a permit upon a finding that:
  - i. the permittee has failed or refuses to comply with the terms and conditions of the permit or any modifications thereof, or
  - ii. the permittee has submitted false or incomplete information in his application or otherwise, or
  - iii. the permittee has failed or refused to comply with any lawful order or request of the permitting body or the secretary.
- b. The permitting body shall notify the permittee in writing that the permit has been suspended and the reasons therefor and order the permittee to cease immediately all previously authorized activities. The notice shall also advise the permittee that he will be given, upon request made within 10 days of receipt of the notice, an opportunity to respond to the reasons given for the suspension.
- c. After consideration of the permittee's response, or, if none, within 30 days after issuance of the notice, the permitting body shall take action to reinstate, modify or revoke the permit and shall notify the permittee of

the action taken.

3. Revocation. If, after compliance with the suspension procedures in Subsection B, above, the permitting body determines that revocation or modification of the permit is warranted, written notice of the revocation or modification shall be given to the permittee.

4. Enforcement. If the permittee fails to comply with a cease and desist order or the suspension or revocation of a permit, the permitting body shall seek appropriate civil and criminal relief as provided by §214.36 of the SLCRMA.

5. Extension

a. The secretary shall review extension requests subject to this part on a case-by-case basis. The secretary shall determine, based upon the merits of the request and upon the compliance of the permitted activity with the regulations and policies existing at the time of the request, whether extension may be considered.

b. If the secretary determines that extension may be considered, the Coastal Management Division shall cause to be issued for public comment, for a period of 25 days, a copy of the original permit with its associated drawings in accordance with Subparagraph h below. The secretary shall consider public comments received during this period prior to the final decision on whether to allow permit extension. The sole reason for not allowing extension based upon public comment shall be that there has been a change in the conditions of the area affected by the permit since the permit was originally issued.

c. If the secretary determines that a permit should not be extended, the permittee shall be notified and, provided that the permittee desires a new permit, the use shall be subject to processing as a new permit application pursuant to the procedures set forth in Subsection C. A decision of the secretary not to allow extension of a permit shall not be subject to appeal. A decision of the secretary to allow extension shall be subject to appeal only on the grounds that the proposed activity should be treated as a new application pursuant to Subsection C rather than be considered for extension.

d. The permit terms of noncontinuing uses may be extended once for an additional two years, except that an extension may be granted only for the term to initiate work and not for the term to complete work as described in Subsection C.9.c.i above.

e. All coastal use permits in effect on the date these rules are adopted are eligible for extension provided that all requirements in Subparagraph f below are met.

f. Extension requests shall be in the form of a written letter which shall refer to the original coastal use permit application number and specifically state that a permit extension is desired. An extension request fee in the amount of \$80 must be included with such a request, and the request must be received by the Coastal Management Division no sooner than 180 days and no later than 60 days prior to the expiration of the permit in question. Requests received later than 60 days prior to the expiration date of the permit shall not be eligible for consideration for extension.

g. Extension requests involving modifications to a permitted activity which would result in greater impacts to the environment than previously permitted will be considered as new applications rather than as extension requests. Extension requests involving modifications to a permitted activity which would result in identical or lesser impacts to the environment than previously permitted may be considered as extension requests, and must, in addition to the requirements in Subparagraph f above, contain adequate information (such as drawings, maps, etc.) to support and explain the proposed modifications.

h. The Coastal Management Division shall issue notice of the extension request to all members of the Joint Public Notice mailing list, and shall publish notice that the extension request has been granted or denied in the Bi-weekly Status Report that is published in the state journal as well as mailed to Joint Public Notice mailing recipients.

E. General Permits

1. General

a. The administrator may, after compliance with the procedures set forth in Subsection C.4 and 5, issue general permits for certain clearly described categories of uses requiring coastal use permits. After a general permit has been issued, individual uses falling within those categories will not require full individual permit processing unless the administrator determines, on a case-by-cases basis, that the public interest requires full review.

b. General permits may be issued only for those uses that are substantially similar in nature, that cause only minimal adverse impacts when performed separately, that will have only minimal adverse cumulative impacts and that otherwise do not impair the fulfillment of the objectives and policies of the coastal management program.

c. When an individual use is authorized under a general permit, the authorization shall include condition(s) which, pursuant to §724, ensure the mitigation of wetland ecological values which would be lost due to

the individual use.

d. In addition to the fees identified at §723.C.3.a, any person seeking authorization under a general permit shall be charged a compensatory mitigation processing fee, if applicable, pursuant to §724.D.

2. Reporting

a. Each person desiring to commence work on a use subject to a general permit must give notice to the secretary and receive written authorization prior to commencing work. Such authorization shall be issued within 30 days of receipt of the notice.

b. Such notice shall include:

- i. the name and address of the person conducting the use,
- ii. such descriptive material, maps, and plans as may be required by the secretary for that general permit.

3. Conditions of General Permits

a. The secretary shall prescribe such conditions for each general permit as may be appropriate.

b. A general permit may be revoked if the secretary determines that such revocation is in the public interest and consistent with the coastal management program.

4. Local General Permits. A local government with an approved local program may issue general permits for uses of local concern under its jurisdiction pursuant to the above procedures. Such general permits shall be subject to approval by the secretary.

F. Determinations as to Whether Uses are of State Concern or Local Concern

1. Filing of Applications with a Local Government with an Approved Local Coastal Program

a. The local government shall make the initial determination as to whether the use is one of state concern or local concern on all applications filed with the local government. This determination shall be based on the criteria set forth in Paragraph 3 below.

b. The determination and a brief explanation of the rationale behind the determination shall be forwarded to the secretary within two working days of receipt of the apparently complete application, pursuant to Subsection C.4.d.

c. The secretary shall review the decision and rationale and shall let it stand or reverse it. If the secretary reverses the local decision, notice, including a brief explanation of the rationale for the reversal shall be sent to the local government within two working days of receipt of the application from the local government.

d. The appropriate permitting body for the use, as determined by the secretary, shall thereafter be responsible for the permit review process.

2. Filing of Application with the Secretary. Within two working days of the filing of an apparently complete application with the secretary, the secretary shall make a determination as to whether the use is one of state concern or local concern based on the criteria set forth in Paragraph 3 below. Notice shall be given to affected local programs of the determination whether the use is a use of state or local concern. The secretary shall give full consideration to local program comments or objections to any such determination in making future determinations.

3. Criteria for Determination

a. The following factors shall be used in making a determination as to whether a use is of state or local concern:

- i. the specific terms of the uses as classified in the act;
- ii. the relationship of a proposed use to a particular use classified in the act;
- iii. if a use is not predominately classified as either state or local by the act or the use overlaps the two classifications, it shall be of local concern unless it:
  - (a). is being carried out with state or federal funds;
  - (b). involves the use of or has significant impacts on state or federal lands, water bottoms, or works;
  - (c). is mineral or energy development, production or transportation related;
  - (d). involves the use of, or has significant impacts, on barrier islands or beaches or any other shoreline which forms part of the baseline for Louisiana's offshore jurisdiction;
  - (e). will result in major changes in the quantity or quality of water flow and circulation or in salinity or sediment transport regimes; or
  - (f). has significant interparish or interstate impacts.

b. For purposes of this Paragraph, the term "state" shall mean the state of Louisiana, its agencies, and political subdivisions; but not local governments, their agencies and political subdivisions.

G. Determination as to Whether a Coastal Use Permit Is Required

1. Request by Applicant

a. Any person who proposes to conduct an activity may submit a request in writing to the secretary for a formal finding as to whether the proposed activity is a use of state or local concern within the coastal zone subject to the coastal use permitting program. The person making the request shall submit with the request a complete application for a coastal use permit and shall provide such additional information requested by the secretary as may be appropriate.

b. The requesting party must set forth sufficient facts to support a finding that the proposed activity either:

- i. is exempt from coastal use permitting; or
- ii. does not have a direct and significant impact on coastal waters; or
- iii. is outside the coastal zone boundary.

c. Within 30 days of receipt of the request and the complete application, the requestor shall be sent notice of the decision on the request and public notice of the decision shall be given.

#### 2. Finding Without Request

a. In reviewing a permit application for which no request has been submitted, the secretary may find after full consideration of the application, likely impacts of the proposed use, comments received, and applicable rules, regulations and guidelines, that a coastal use permit is not required. If he finds that no permit is required, the secretary shall notify the applicant and give public notice.

b. A local government with an approved program may request that the secretary review an application for a use of local concern and make a determination as to whether a coastal use permit is required, pursuant to the procedures provided for in Paragraph 2.a above. The secretary shall notify the local government of his decision.

#### 3. Decisions

a. Only the secretary may determine that a coastal use permit is not required. A permit shall not be required if the proposed use or activity will not occur within the boundary of the coastal zone, does not have a direct and significant impact on coastal waters, or is exempt from permitting by Subsection C of these rules or by §214.31 (B) or (C), §214.32 (A) or §214.34 of the SLCRMA.

b. The notice sent to the requestor or applicant shall include a short and plain statement of the basis for the decision. Public notice of the decision shall be given pursuant to Subsection C.5.f of these rules.

#### 4. Actions After Decision

a. If the determination is that a coastal use permit is required, processing of the application may be commenced or continued pursuant to Subsection C of these rules.

b. If the determination is that a coastal use permit is not required, the requestor or the applicant may proceed to carry out the activity. Provided that the secretary shall not be stopped from subsequently requiring a permit or issuing cease and desist orders if it is found that the activity as implemented is significantly different from that shown on the request or application, does in fact have a direct or significant impact on coastal waters, or otherwise requires a coastal use permit. Other civil or criminal sanctions shall not be available in the absence of fraud, ill practices, deliberate misrepresentation, or failure to comply with any cease and desist or other lawful order of the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Office of the Secretary, LR 21:835 (August 1995).

#### §724. Rules and Procedures for Mitigation

A. General. This Section provides general procedures for avoiding and minimizing adverse impacts identified in the permit review process, restoring impacted sites when appropriate, quantifying anticipated unavoidable wetland ecological value losses, requiring appropriate and sufficient compensatory mitigation, establishing mitigation banks, establishing advanced mitigation projects, and evaluating and processing requests for variances from the compensatory mitigation requirement.

B. Avoidance, Minimization, and Restoration of, and Compensation for, Potential Wetland Ecological Value Losses

1. The secretary shall not grant a coastal use permit or issue a general permit authorization for an individual activity unless the permit/authorization is conditioned to include:

a. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to avoid and minimize those adverse impacts identified during the permit review process; and

- b. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to restore impacted sites when appropriate; and
  - c. a requirement for compensatory mitigation to offset any net loss of wetland ecological value that is anticipated to occur despite efforts to avoid, minimize, and restore permitted/authorized impacts (i.e., unavoidable net loss of wetland ecological value), unless a variance is granted pursuant to §724.K.
2. If the secretary determines that a proposed activity would comply with §§701-719 and would not result in a net loss of wetland ecological values, the secretary shall not require compensatory mitigation.
  3. When a proposed oil and gas exploration site would impact vegetated wetlands, the determination regarding the avoidance and minimization of adverse impacts and impact site restoration for the proposed exploration activity and its associated production and transmission activities shall be made through the geological review procedure.
  4. In addition to the requirement contained in §724.B.3, the secretary may utilize the geologic review procedure, when requested by the Louisiana Department of Wildlife and Fisheries (LDWF), to render the determination regarding avoidance and minimization of adverse impacts and impact restoration, for proposed oil and gas exploration activities and its associated production and transmission activities which would:
    - a. occur within one-quarter mile of an oyster seed ground, oyster seed reservation, or a public oyster harvesting area;
    - b. impact other oyster or other shell reef(s);
    - c. occur within the boundaries of a wildlife refuge or wildlife management area owned or managed by LDWF; or
    - d. occur within an area designated as a natural and scenic river in accordance with the provisions of R.S. 56:1840 et seq.
- C. Quantification of Anticipated Net Gains and Unavoidable Net Losses of Ecological Value
1. When compensatory mitigation would be accomplished via the use of the Fina-Laterre Mitigation Bank or the Nature Conservancy's Pine Flatwood Mitigation Bank, net gains and unavoidable net losses of ecological value shall be quantified in accordance with the valuation and accounting procedures described in the respective memoranda of agreement.
  2. Except as allowed in §724.C.1 and §724.H.3, anticipated net gains and unavoidable net losses of ecological value shall be quantified as cumulative habitat units (CHUs) or average annual habitat units (AAHUs), whichever is most appropriate for the given situation.
  3. If CHUs are determined to be appropriate:
    - a. Net gain or net loss of ecological value = (sum of CHUs produced in a future-with-project scenario) - (sum of CHUs produced in a future-without-project scenario).
    - b. CHUs for each time interval within the project years shall be calculated by the following formula and in general accordance with the U.S. Fish and Wildlife Service's Habitat Evaluation Procedure:  

$$\text{CHUs} = (T_2 - T_1) \times \left\{ \left[ (A_1 \times \text{HSI}_1 + A_2 \times \text{HSI}_2) / 3 \right] + \left[ (A_2 \times \text{HSI}_1 + A_1 \times \text{HSI}_2) / 6 \right] \right\}$$
 where  $T_1$  = first year of time interval,  $T_2$  = last year of time interval,  $A_1$  = wetland acres at beginning of time interval,  $A_2$  = wetland acres at end of time interval,  $\text{HSI}_1$  = habitat suitability index at beginning of time interval, and  $\text{HSI}_2$  = habitat suitability index at end of time interval.
  4. If AAHUs are determined to be appropriate:
    - a. Net gain or net loss of ecological value = (AAHUs produced in a future-with-project scenario) - (AAHUs produced in a future-without-project scenario).
    - b.  $\text{AAHUs} = (\text{sum of CHUs for a given scenario}) / (\text{project years})$ .
  5. The quantification of "wetland acres," at selected times throughout the project years, shall be based on the following factors:
    - a. the vegetated wetland acreage depicted, in the accepted permit application, as being directly impacted by the proposed activity;
    - b. when determined to be appropriate by the secretary, vegetated wetland acreage of secondary impact; see definition of secondary impact in §700; and
    - c. the vegetated wetland acreage that would have been present at the activity site, at selected times throughout the project years, without implementation of the proposed activity, based on the best available, as determined by the secretary, vegetated wetland loss or gain data.
  6. If (1) the vegetated wetland acreage to be altered by the proposed activity is limited to the area depicted in the accepted permit application and (2) the only anticipated variation in that acreage would be due to vegetated wetland loss or gain, an "adjusted acreage" can be calculated with the following formula and utilized in lieu of

calculating acreage at selected times throughout project years: Adjusted acres = {acres of direct impact - [acres of direct impact  $\times$  annual land loss rate  $\times$  (project years / 2)]}.

7. The secretary shall provide upon request, to any interested party, the source and resultant vegetated wetland loss or gain data which would be applied to a specific proposed activity.

8. "Habitat suitability indices" (HSI) shall be determined by applying:

a. for marsh habitats, the May 2, 1994, version of the Wetland Value Assessment Methodology Models, developed by the Coastal Wetland Planning, Protection, and Restoration Act (P.L. 101-646) Environmental Work Group; or

b. for bottomland hardwoods and fresh swamp, the January 10, 1994, version of "Habitat Assessment Models for Fresh Swamp and Bottomland Hardwoods Within the Louisiana Coastal Zone."

9. The secretary may adopt modifications to those models, provided that the resultant "habitat suitability index" values do not vary more than 15 percent from the above referenced versions. Modifications which cause greater than 15 percent variation in "habitat suitability index" values or adoption of alternative models or methodology may be undertaken only in accordance with provisions of R.S. 49:953. The amount of variation shall be determined by comparing the results of the models referenced above with the results of the modified models on a minimum of 10 sites for the appropriate habitat type(s).

#### D. Compensatory Mitigation Processing Fees

1. In addition to the fees identified at §723.C.3.a.i-ii, when the secretary determines that compensatory mitigation would be required pursuant to §724.B, a fee shall be charged for the evaluation, processing, and determination of compensatory mitigation requirements. The fee shall apply regardless of which compensatory mitigation option is selected and shall be in addition to any cost incurred to implement the required compensatory mitigation. The requested permit or general permit authorization for an individual activity shall not be issued until the secretary has received the compensatory mitigation processing fee. This fee shall be determined as follows:

a. Noncommercial activities which directly impact 1.00 acre or less of vegetated wetlands shall be assessed a compensatory mitigation processing fee of \$50.

b. All other activities shall be assessed a compensatory mitigation processing fee according the following table:

<b>Vegetated Wetland Acres Depicted as Directly Altered in Accepted Permit Application</b>	<b>Compensatory Mitigation Processing Fee</b>
0 - 0.50	\$150
0.51 - 1.00	\$300
1.01 - 2.00	\$600
2.01 - 3.00	\$900
3.01 - 4.00	\$1,200
4.01 - 5.00	\$1,500
5.01 - 10.00	\$2,250
10.01 - 15.00	\$3,750
15.01 - 25.00	\$6,000
25.01 - 100.00	\$12,500
> 100.00	\$15,000

2. Unless waived or reduced by the secretary, the compensatory mitigation processing fee shall apply even if the secretary grants a full variance to the compensatory mitigation requirement pursuant to §724.K.

#### E. Compensatory Mitigation Options

1. Compensatory mitigation shall be accomplished through one or more of the following compensatory mitigation options as approved by the secretary:
  - a. use or acquisition of an appropriate type and quantity of mitigation credits from a mitigation bank approved by the secretary, pursuant to §724.F;
  - b. use or acquisition of an appropriate type and quantity of advanced mitigation credits from an advanced mitigation project approved by the secretary, pursuant to §724.G;
  - c. implementation of an individual mitigation measure or measures to offset the unavoidable ecological value losses associated with the permitted activity, pursuant to §724.H;
  - d. monetary contribution to the affected landowner, affected parish, and/or the Louisiana Wetlands Conservation and Restoration Fund, pursuant to §724.I; and
  - e. "other" compensatory mitigation options determined to be appropriate by the secretary.

**F. Mitigation Banks**

1. The secretary shall consider proposals by federal and state agencies, local governing bodies, and private entities to establish wetland mitigation banks.
2. In determining the acceptability and appropriateness of establishing a mitigation bank, the secretary shall consider the following factors:
  - a. the potential mitigation bank operator's history of compliance with the guidelines and the state program over at least the preceding five years;
  - b. the mitigation bank operator's potential ability to operate and maintain the mitigation bank throughout the life of the bank (i.e., 20 years for marsh mitigation banks or 50 years for forested wetland mitigation banks);
  - c. the mitigation bank's potential to create, restore, protect, and/or enhance vegetated wetlands;
  - d. the mitigation bank's potential effect (positive or negative) on wetland values such as fish and wildlife habitat (particularly rare habitat or habitat for rare fauna), floodwater storage, water quality improvement, storm surge protection, etc.;
  - e. the mitigation bank's potential effect (positive or negative) on lands and wetland values adjacent to or in the vicinity of the bank; and
  - f. whether the proposed project is included on, consistent with, or in conflict with any state and/or federal project list, general plan, or other effort designed to create, restore, protect, or enhance vegetated wetlands.
3. In addition to the fees identified at §723.C.3.a.i-ii, nonrefundable fees shall be charged for the initial evaluation, habitat evaluation, establishment, and periodic review of mitigation banks according to the following table:

<b>Proposed Mitigation Bank Acreage</b>	<b>Informal Review</b>	<b>Initial Evaluation Fee</b>	<b>Habitat Evaluation Fee</b>	<b>Establishment Fee</b>	<b>Periodic Review Fee</b>
0 - 100	\$0	\$75	\$350	\$75	\$50
101 - 500	\$0	\$150	\$700	\$150	\$100
501 - 1,000	\$0	\$225	\$1,050	\$225	\$200
1,001 - 5,000	\$0	\$300	\$1,400	\$300	\$300
> 5,000	\$0	\$375	\$1,750	\$375	\$400

4. Proposals for the establishment of mitigation banks utilizing projects which have been permitted but not fully implemented or projects which would not require a permit shall be considered as follows:
  - a. The secretary shall provide, without charging a fee, potential mitigation bank operators an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.
  - b. Potential mitigation bank operators shall submit a written request for the secretary to consider designation of a mitigation bank; the following must be provided with the request:
    - i. coastal use permit and Section 404 (Corps') permit numbers, if applicable;

- ii. detailed drawings and project description unless such information is already on file with the department;
- iii. a statement describing the extent to which the project has been implemented;
- iv. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and
- v. the mitigation bank initial evaluation fee identified at §724.F.3.
- c. The secretary shall review the request and within 20 days:
  - i. inform the potential operator of the request's completeness; and
  - ii. if the request is not complete or if additional information is needed, the secretary shall advise the potential operator, in writing, of the additional information necessary to evaluate and process the request.
- d. Within 30 days of the secretary's acceptance of the request as complete, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in a meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s) or received in writing within 20 days of any such meeting(s).
- e. Within 90 days of the secretary's acceptance of the request as complete, the secretary shall render a preliminary determination as to whether the project would be acceptable as a mitigation bank and:
  - i. if the project is preliminarily determined to be acceptable as a mitigation bank, the secretary shall inform the potential operator of such determination; or
  - ii. if a project is preliminarily determined to be unacceptable as a mitigation bank, the secretary shall advise the potential bank operator, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the project preliminarily acceptable as a mitigation bank.
- f. If a permit modification is necessary and is requested by the permittee in accordance with §723.D, the secretary shall process the request for modification in accordance with §723.D.
- g. If and when the project is preliminarily determined to be acceptable as a mitigation bank, the secretary shall request the potential bank operator to submit the mitigation bank habitat evaluation fee pursuant to §724.F.3.
- h. Within 90 days of receipt of the habitat evaluation fee, the secretary shall determine the quantity, by habitat type, of potential mitigation credits in accordance with §724.F.6.
- i. Pursuant to §724.F.7, the secretary shall identify and require a mechanism(s) to ensure appropriate remediation, operation, and maintenance of mitigation bank features.
- j. The secretary shall render a final determination as to whether the project would be acceptable as a mitigation bank. If the project is determined to be acceptable as a mitigation bank, the secretary and the mitigation bank operator shall enter into a memorandum of agreement (MOA) which fulfills the requirements of §724.F.8. The MOA shall serve as the formal document which designates a project as a mitigation bank. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the mitigation bank by signing the MOA.

5. Proposals for the establishment of mitigation banks utilizing projects which would require a permit shall be considered as follows:

- a. The secretary shall provide, without charging a fee, potential mitigation bank operators an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.
- b. Potential mitigation bank operators shall submit a standard permit application in accordance with §723.C. The following must be provided with the permit application:
  - i. a statement indicating the applicant's interest in establishing a mitigation bank;
  - ii. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and
  - iii. the mitigation bank initial evaluation fee identified at §724.F.3.
- c. The secretary shall review and process the permit application in accordance with §723.C, with added consideration that the project is proposed as a mitigation bank.
- d. During the public notice period, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in a meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s), received in writing during the public notice period, or received in writing within 20 days of any such meeting(s).
- e. The secretary shall render a preliminary determination as to whether the proposed activity would be acceptable as a mitigation bank, and:



i. if the proposed activity is preliminarily determined to be acceptable as a mitigation bank, the secretary shall inform the potential operator of such determination; or

ii. if a project is preliminarily determined to be unacceptable as a mitigation bank, the secretary shall advise the potential bank operator, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the proposed activity preliminarily acceptable as a mitigation bank.

f. If and when a proposed activity is preliminarily determined to be acceptable as a mitigation bank, the secretary shall request the potential bank operator to submit the mitigation bank habitat evaluation fee pursuant to §724.F.3.

g. Following receipt of the habitat evaluation fee, the secretary shall determine the quantity, by habitat type, of potential mitigation credits in accordance with §724.F.6.

h. Pursuant to §724.F.7, the secretary shall identify and require a mechanism(s) to ensure appropriate remediation, operation, and maintenance of mitigation bank features.

i. The secretary shall render a final determination as to whether the proposed activity would be acceptable as a mitigation bank. If the proposed activity is determined to be acceptable as a mitigation bank, the secretary and the mitigation bank operator shall enter into a MOA which fulfills the requirements of §724.F.8. The MOA shall serve as the formal document which designates a project as a mitigation bank. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the mitigation bank by signing the MOA.

6. The secretary shall determine the quantity, by habitat type, of mitigation credits potentially available for donation, sale, trade, or use from a proposed mitigation bank as follows:

a. Following receipt of the mitigation bank habitat evaluation fee (§724.F.3), the secretary shall invite state advisory agencies, the Corps, federal advisory agencies, and the potential mitigation bank operator to participate in the determination of potential mitigation credits. The secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the potential mitigation bank operator made during, or received in writing within 20 days of, each field investigation or other meeting held to determine the type and quantity of potentially available mitigation credits.

b. The total quantity of potential mitigation credits (AAHUs or CHUs), by habitat type, attributable to the proposed mitigation bank shall be predicted by applying the methodology described in §724.C. The secretary shall consult with the state advisory agencies, the Corps, and federal advisory agencies to ensure that data gathering techniques of sufficient quality and intensity to allow replication of habitat response assessments throughout the mitigation bank life are employed.

c. For projects which have been partially implemented prior to designation as a mitigation bank, total potential mitigation bank credits would be limited to those attributed to features implemented after designation as a bank, except that if agreed to in advance by the secretary total potential credits could include those attributed to features implemented between the time of the mitigation request being accepted by the secretary and bank designation. Credits generated from features implemented as a result of public conservation or restoration funds or as a result of funds serving as mitigation for previous wetland losses shall not be considered part of total potential mitigation credits.

d. Mitigation credits which are donated, sold, traded, or otherwise used for compensatory mitigation shall be referred to as debited credits.

7. Mechanisms for Ensuring Remediation, Operation, and Maintenance of Mitigation Bank Features

a. Three options are available to meet the requirements of §724.F.4.i and §724.F.5.h:

i. for any mitigation bank, mitigation credits could be made available to the mitigation bank operator incrementally over the life of the bank based on periodic reviews of habitat response pursuant to §724.F.10; or

ii. for banks which include features which do not typically require operation or maintenance and involve the types of mitigation measures which have produced consistent and demonstrated success, 100 percent of available credits would be made available to the mitigation bank operator when the bank becomes operational, provided that:

(a). the operator has established a conservation servitude pursuant to §724.F.7.b for the property involved in the mitigation bank; and

(b). the operator establishes a financial mechanism pursuant to §724.F.7.c-e to ensure the availability of funds, for a period of five years, for remediation of the mitigation bank features; or

iii. for banks which include features which typically require remediation, operation, or maintenance

(such as water control structures, plugs, channel improvement works, shore or bank protection structures, etc.) or involve the types of mitigation measures which lack consistent and demonstrated success, 25 percent of available credits would be made available, when the bank becomes operational, to the mitigation bank operator for the first two years of operation provided that (1) the operator establishes a conservation servitude pursuant to §724.F.7.b for the property involved in the mitigation bank, (2) the operator establishes a financial mechanism pursuant to §724.F.7.c-e to ensure the availability of funds, for the life of the bank, for remediation (as may be needed for expectable and catastrophic events), operation, and maintenance of the mitigation bank, and (3) the operator provides for the life of the bank, in case the operator fails to remediate, operate, or maintain the mitigation bank in accordance with the MOA, legal authority for the department to perform the warranted remediation, operation, or maintenance; the remaining 75 percent of the credits would be made available in the third year provided that a review of habitat response (§724.F.9) indicates initial success of the mitigation features.

- b. The conservation servitude shall be established in accordance with R.S. 9:1271 et seq. and shall:
  - i. cover all the property located within the mitigation bank;
  - ii. if appropriate, contain specific language regarding the extent of allowable timber harvesting;
  - iii. if appropriate, contain specific language regarding the extent of other allowable activities;
  - iv. prohibit all other activities which may reduce the ecological value of the site;
  - v. specify the term to be 20 years or more for marsh habitats and 50 years or more for forested habitats;
  - vi. designate the department as the holder of the servitude;
  - vii. convey a "third party right of enforcement" to any interested MOA signatory or other party as may be mutually agreed to by the secretary and the mitigation bank operator; and
  - viii. be recorded in the property records of the parish in which the property is located.
- c. The financial mechanism established by the mitigation bank operator could be a letter of credit, surety bond, escrow account, or other mechanism; to be acceptable to the secretary the financial mechanism shall:
  - i. for mitigation banks described in §724.F.7.a.ii, ensure payment of the designated amount for remediation of the mitigation measures for a period of five years;
  - ii. for mitigation banks described in §724.F.7.a.iii, ensure payment of the designated amount for remediation, operation, or maintenance of the mitigation measures for a period equal to the life of the mitigation bank; and
  - iii. ensure that such payments would be made to the Louisiana Wetlands Conservation and Restoration Fund in the event that the mitigation bank operator fails to perform the remediation, operation, or maintenance specified in the MOA.
- d. If a letter of credit or escrow account is utilized, the letter or account should be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" and shall not, in any situation, be provided by a depository that is "significantly under capitalized" or "critically under capitalized" as defined in Section 38 of the Federal Deposit Insurance Act.
- e. If a surety bond is utilized, the bond shall be written by a surety or insurance company which, at the time of MOA execution, is on the latest U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana-domiciled surety or insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of the policyholder's surplus.

8. The formal MOA to be developed between the secretary and the mitigation bank operator shall, at a minimum:

- a. provide a statement of purpose;
- b. define the physical boundaries of the mitigation bank;
- c. specifically describe the wetland creation, restoration, protection, and enhancement measures to be implemented;
- d. specify that the period of operation and maintenance of the mitigation bank is 20 years or more for marsh habitats and 50 years or more for forested habitats;
- e. describe the mechanism(s), which meets or which will meet the requirements of §724.F.7;
- f. identify the habitat assessment methodology utilized to establish the quantity of mitigation to be credited, including an explanation of any calculations necessary to account for a project life which may, at the option of the mitigation bank operator, be greater than 20 years for marsh projects or greater than 50 years for forested wetland projects;
- g. identify, by habitat type, the quantity of total credits;

- h. identify the schedule for credits becoming available;
  - i. identify the schedule for reviewing habitat response over the life of the bank;
  - j. specifically identify the bank operator responsibilities regarding monitoring and/or providing information necessary for habitat response reviews;
  - k. for mitigation banks described at §724.F.7.a.iii, specifically define the remedial actions for situations where the bank operator fails to perform the necessary remediation, operation, or maintenance, including securing payments pursuant to §724.F.7 and ensuring legal authority for the department to perform necessary remediation, operation, or maintenance; and
  - l. for mitigation banks described at §724.F.7.a.iii, specifically define the course of action where habitat response is greater than or is less than predicted.
9. The secretary shall review the habitat response of mitigation banks as follows:
- a. The mitigation bank operator shall submit the periodic review fee identified at §724.F.3 to the department within 60 days of being requested to do so by the secretary.
  - b. Failure to submit such payment shall result in suspension of the mitigation bank until such time that the fee is submitted; if the fee is not submitted within 120 days of the secretary's request, the mitigation bank shall be terminated and the secretary shall require the mitigation bank operator to provide compensatory mitigation to offset the ecological value credits which were debited but not actually produced by the time of termination.
  - c. State advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator shall be invited to participate in each habitat response review; the secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator made during, or received in writing within 20 days of, each field investigation or other meeting related to these reviews.
  - d. For all banks, a review shall be conducted prior to the end of the second full year of the bank being considered operational, but at least 20 months after commencement of operation; the purpose of this review is to determine if any remediation or adjustments to the prescribed operation or maintenance is necessary.
  - e. For those banks described at §724.F.7.a.iii, if the review conducted prior to the end of the second full year of operation indicates that the mitigation measures are functioning as projected, the remaining 75 percent of the mitigation credits shall be made available to the mitigation bank operator; if that review indicates that the mitigation measures are not functioning as projected, no additional mitigation credits shall be made available to the mitigation bank operator until such time that a recalculation of projected credits is made and/or it is demonstrated that the mitigation measures are functioning as predicted.
  - f. In addition to the review conducted prior to the end of the second full year of operation, a review of all marsh mitigation banks shall be conducted within four months prior to the completion of the fifth, tenth, fifteenth, and twentieth years, and a review of all forested wetland mitigation banks shall be conducted prior to the completion of the fifth, tenth, twentieth, thirtieth, fortieth, and fiftieth years. The purposes of these reviews are to determine if remediation is needed, to determine the possible benefit of revising project features and/or their operation or maintenance, to determine if the mitigation bank operator has operated and maintained the mitigation measures as agreed to in the MOA, and to determine if the habitat has responded as predicted.
10. If the secretary and mitigation bank operator agree, pursuant to §724.F.7.a, to ensure appropriate remediation, operation, and maintenance of mitigation bank features via the incremental availability of mitigation credits during the life of the bank, the following procedures shall be followed:
- a. Twenty-five percent of the total credits for mitigation banks (marsh and forested wetland banks) shall be made available to the mitigation bank operator upon full implementation of the wetland mitigation measures described in a signed MOA; or if a signed MOA calls for phased implementation of the mitigation measures, an appropriate percentage, not to exceed 25 percent shall be made available to the mitigation bank operator upon implementation of the initial phase(s); these credits shall be referred to as available credits.
  - b. If at any time, the mitigation bank can not be operated and maintained as described in the MOA due to force majeure, the mitigation bank operator shall have the option of rectifying the wetland creation, restoration, protection, and enhancement measures.
    - i. If the mitigation bank operator chooses to rectify those measures, the secretary shall recalculate the number of total credits, if it is anticipated that such a recalculation would yield a result substantially different from the current projection of total credits.

(a). The amount of those recalculated total credits which shall be made available for marsh mitigation banks shall be determined according to the following table:

<b>Year of Recalculation</b>	<b>Available Credit</b>
1 - 5	Initially available credit (i.e., 25 percent) minus previously debited credit or 25 percent of recalculated total credit minus previously debited credit whichever is greater.
6 - 10	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
11 - 15	Initially available credit (i.e., 25 percent) minus previously debited credit or 75 percent of recalculated total credit minus previously debited credit whichever is greater.
16 - 20	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(b). The amount of those recalculated total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table:

<b>Year of Recalculation</b>	<b>Available Credit</b>
1 - 5	Initially available credit (i.e., 25 percent) minus previously debited credit or 25 percent of recalculated total credit minus previously debited credit whichever is greater.
6 - 10	Initially available credit (i.e., 25 percent) minus previously debited credit or 35 percent of recalculated total credit minus previously debited credit whichever is greater.
11 - 20	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
21 - 30	Initially available credit (i.e., 25 percent) minus previously debited credit or 65 percent of recalculated total credit minus previously debited credit whichever is greater.
31 - 40	Initially available credit (i.e., 25 percent) minus previously debited credit or 80 percent of recalculated total credit minus previously debited credit whichever is greater.
41 - 50	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

ii. If the mitigation bank operator chooses not to rectify those measures, the donation, sale, trade, or other use (i.e., debiting) of mitigation credits shall continue only if the initially available credits (i.e., 25 percent) have not yet been debited, and shall cease when those initially available credits are debited. If credits debited already exceed the initially available credits, the secretary shall not require the mitigation bank operator to compensate for credits already debited.

c. If a periodic review reveals that the mitigation bank operator has complied with the MOA, total and available credits shall be adjusted as follows:

i. If the habitat is responding as predicted,

(a). the amount of total credits which shall be made available for marsh mitigation banks shall be determined according to the following table:

<b>Year of Review</b>	<b>Available Credit</b>
5	50 percent of total credit minus previously debited credit.
10	75 percent of total credit minus previously debited credit.
15	100 percent of total credit minus previously debited credit.

(b). the amount of total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table:

<b>Year of Review</b>	<b>Available Credit</b>
5	35 percent of total credit minus previously debited credit.
10	50 percent of total credit minus previously debited credit.
20	65 percent of total credit minus previously debited credit.
30	80 percent of total credit minus previously debited credit.
40	100 percent of total credit minus previously debited credit.

ii. If the habitat is responding better than predicted and the secretary anticipates that the total credits to be generated would likely be greater than the original projection of total credits, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank, and:

(a). the amount of those recalculated total credits which shall be made available for marsh mitigation banks shall be determined according to the following table:

<b>Year of Recalculation</b>	<b>Available Credit</b>
5	50 percent of recalculated total credit minus previously debited credit.
10	75 percent of recalculated total credit minus previously debited credit.
15	100 percent of recalculated total credit minus previously debited credit.

(b). the amount of those recalculated total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table:

<b>Year of Recalculation</b>	<b>Available Credit</b>
5	35 percent of recalculated total credit minus previously debited credit.
10	50 percent of recalculated total credit minus previously debited credit.
20	65 percent of recalculated total credit minus previously debited credit.
30	80 percent of recalculated total credit minus previously debited credit.

<b>Year of Recalculation</b>	<b>Available Credit</b>
40	100 percent of recalculated total credit minus previously debited credit.

iii. If the habitat is responding favorably but not as well as predicted, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank, and:

(a). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the following table:

<b>Year of Review</b>	<b>Available Credit</b>
5	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
10	Initially available credit (i.e., 25 percent) minus previously debited credit or 75 percent of recalculated total credit minus previously debited credit whichever is greater.
15	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(b). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the following table:

<b>Year of Review</b>	<b>Available Credit</b>
5	Initially available credit (i.e., 25 percent) minus previously debited credit or 35 percent of recalculated total credit minus previously debited credit whichever is greater.
10	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
20	Initially available credit (i.e., 25 percent) minus previously debited credit or 65 percent of recalculated total credit minus previously debited credit whichever is greater.
30	Initially available credit (i.e., 25 percent) minus previously debited credit or 80 percent of recalculated total credit minus previously debited credit whichever is greater.
40	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(c). the secretary shall not require the mitigation bank operator to compensate for credits already debited as long as the mitigation bank continues to operate.

iv. if implementation of the mitigation bank is adversely affecting the bank area (i.e., actually producing less ecological value than would have been produced without implementation of the mitigation bank):

(a). the donation, sale, trade, or other use (i.e., debiting) of mitigation credits shall cease unless and until the mitigation bank operator implements measures, as prescribed by the secretary, to reverse the adverse effect;

(b). if the adverse effect is not reversed, the secretary may not require the mitigation bank operator to compensate for credits already debited;

(c). if the mitigation bank operator attempts to reverse the adverse effect, the debiting of

mitigation credits may continue, but shall not go beyond the initially available credits (i.e., 25 percent) until the secretary determines that adverse effect is reversed;

(d). if the adverse effect is reversed, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank; and

(i). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the table presented in §724.F.10.b.i.(a); and

(ii). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the table presented in §724.F.10.b.i.(b);

(e). the secretary shall determine if the adverse effect has been reversed based on field investigations; consultation with the state advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator; and other methods the secretary deems appropriate.

d. If a periodic review reveals that the mitigation bank operator has failed to comply with the MOA, unless such failure is due to force majeure, the debiting of mitigation credit shall cease and shall not resume unless the compliance failures are rectified within 90 days from a notification by the secretary of apparent failures:

i. if the compliance failures are rectified, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank if it is anticipated that such a recalculation would yield a result substantially different from the current projection:

(a). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the table presented in §724.F.10.c.ii.(a);

(b). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the table presented in §724.F.10.c.ii.(b);

ii. if the compliance failures are not rectified, the secretary may require the mitigation bank operator to provide compensatory mitigation to offset the ecological value of the credits which were debited, but not actually produced, and the secretary may require additional measures via permit modification or revocation.

#### 11. Use of Mitigation Banks for Meeting Compensatory Mitigation Requirements

a. The mitigation bank shall not be considered operational until the following conditions have been met:

i. the mitigation bank operator has submitted to the department the mitigation bank establishment fee (§724.F.3);

ii. the MOA described in §724.F.8 has been signed by the bank operator and the secretary;

iii. the mitigation bank operator has provided evidence that one of the options required pursuant to §724.F.7 has been selected and the conditions of such option have been met;

iv. the wetland mitigation measures described in a signed MOA have been fully implemented; or at least the initial phase(s) of the mitigation measures have been implemented if the signed MOA calls for phased implementation.

b. A permit applicant may acquire, subject to approval by the secretary, mitigation credits from the operator of an approved mitigation bank to meet compensatory mitigation requirements; the applicant is required to provide written evidence to the secretary that such acquisition has taken place; the applicant's responsibility for this component of the compensatory mitigation requirement ceases upon receipt of such evidence by the secretary; mitigation credits may be acquired as compensatory mitigation for activities which are not subject to this Chapter, provided that the secretary is advised of any such transactions; acquired credits shall be debited from available credits.

c. Mitigation credits shall be applicable only to anticipated unavoidable net losses of ecological values.

d. The type of, and acceptability of utilizing, mitigation credits shall be determined in accordance with §724.J.

e. The quantity of credits to be debited shall be determined in accordance with §724.C.

f. The secretary shall maintain an account of total, available, and debited credits for each approved mitigation bank.

g. Compensatory mitigation for permitted activities occurring within the boundary of an established mitigation bank, if sufficient credits are available from that mitigation bank, shall be accomplished as follows:

i. the applicant shall acquire, from the mitigation bank operator, the type and quantity of mitigation credits equivalent to the anticipated net loss of ecological value due to the permitted activity; and

ii. the quantity of total credits for that mitigation bank shall be reduced by the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity; i.e., the acres impacted by the permitted activity shall be eliminated from the mitigation bank and from the calculation of total

credits.

h. Compensatory mitigation for permitted activities occurring within the boundary of an established mitigation bank, if sufficient credits are not available from that mitigation bank, shall account for the anticipated net loss of ecological value due to the permitted activity and the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity.

12. Any donation, sale, trade, or other transfer of mitigation credits, for purposes other than those provided in §724.F.11, must receive approval of the secretary and shall be allowed only upon a concurrent transfer of the mitigation bank MOA or upon concurrent execution of a separate MOA between the recipient of those credits and the secretary.

G. Advanced Mitigation Projects

1. The secretary shall consider proposals by federal and state agencies, local governing bodies, and private entities to implement advanced mitigation projects.

2. A party which establishes an advanced mitigation project shall be referred to as an advanced mitigation sponsor.

3. In determining the acceptability and appropriateness of establishing an advanced mitigation project, the secretary shall consider the following factors:

a. the potential advanced mitigation sponsor's history of compliance with the guidelines and the state program over at least the preceding five years;

b. the advanced mitigation sponsor's willingness and potential ability to maintain the advanced mitigation project for a period of time determined to be appropriate for the subject project;

c. the advanced mitigation project's potential to create, restore, protect, and/or enhance vegetated wetlands and the project's potential to be "self-maintaining" for the appropriate period of time;

d. the advanced mitigation project's potential effect (positive or negative) on wetland values such as fish and wildlife habitat (particularly rare habitat or habitat for rare fauna), floodwater storage, water quality improvement, storm surge protection, etc.;

e. the advanced mitigation project's potential effect (positive or negative) on lands and wetland values adjacent to or in the vicinity of the advanced mitigation project; and

f. whether the proposed advanced mitigation project is included on, consistent with, or in conflict with any state and/or federal project list, general plan, or other effort designed to create, restore, protect, and/or enhance vegetated wetlands.

4. The area from which credits would accrue for advanced mitigation projects shall not exceed 20 acres. In certain special cases, however, the secretary may allow expansion of the area from which credits would accrue, provided that after a waiting period of at least five years from project implementation a habitat re-evaluation demonstrates that an area beyond 20 acres has been benefitted.

5. In addition to the fees identified at §§723.C.3.a.i-ii, nonrefundable fees shall be charged for the initial evaluation, establishment, habitat evaluation, and periodic review of advanced mitigation projects according to the following table:

Informal Review	\$0
Initial Evaluation Fee	\$50
Establishment Fee	\$100
Post-Implementation Evaluation Fee	\$250
Periodic Review Fee	\$50

6. Use of Advanced Mitigation Credits

a. Advanced mitigation credits shall not be available for use until the following conditions have been met:

i. the advanced mitigation sponsor has submitted all necessary fees to the department;

ii. the MOA described in §724.G.7.h has been signed by the advanced mitigation sponsor and the secretary;

iii. the wetland mitigation measures described in the signed MOA have been implemented and in place for one year or more, as determined on an individual case basis;



iv. the secretary has, pursuant to §724.G.9, performed the post-implementation evaluation and determined the type and quantity of advanced mitigation credits which would be attributable to the subject advanced mitigation project.

b. Advanced mitigation credits shall be applicable only to anticipated unavoidable net losses of ecological values.

c. If the advanced mitigation sponsor is a permit applicant, the sponsor may use, subject to approval by the secretary, advanced mitigation credits from its approved advanced mitigation project to meet its compensatory mitigation requirements; other permit applicants may acquire advanced mitigation credits from the sponsor of an approved advanced mitigation project to meet compensatory mitigation requirements, subject to approval by the secretary and subject to following limitations.

i. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a local governmental entity may be used to meet compensatory mitigation requirements only for activities occurring within the geographic limit of the sponsoring entity's jurisdiction.

ii. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a private entity (including but not limited to businesses, industry, landowners, resource conservation groups) may be used to meet compensatory mitigation requirements only for activities undertaken by the advanced mitigation sponsor or for activities undertaken on property owned by the advanced mitigation sponsor.

iii. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a state or federal agency may be used to meet compensatory mitigation requirements only for activities undertaken by the sponsoring agency or on the refuge, management area, etc. where the advanced mitigation project is located.

d. For situations where the permit applicant is not the sponsor of the advanced mitigation site, the applicant is required to provide written evidence to the secretary that the acquisition of credits has taken place; the applicant's responsibility for this component of the compensatory mitigation requirement ceases upon receipt of such evidence by the secretary.

e. The secretary shall maintain an account of total, debited, and remaining advanced mitigation credits for each approved advanced mitigation project.

f. The type of, and acceptability of utilizing, advanced mitigation credits shall be determined in accordance with §724.J.

g. The quantity of credits needed to meet compensatory mitigation requirements shall be determined in accordance with §724.C.

h. Compensatory mitigation for permitted activities occurring within the benefit area of an established advanced mitigation project, if sufficient credits are remaining for that advanced mitigation project, shall be accomplished as follows:

i. the sponsor shall use, or other permit applicants shall acquire, the appropriate type and quantity of advanced mitigation credits needed to offset the anticipated net loss of ecological value due to the permitted activity; and

ii. the quantity of total and remaining credits for that advanced mitigation bank shall be reduced by the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity; i.e., the acres impacted by the permitted activity shall be eliminated from the advanced mitigation project and from the calculation of total and remaining credits.

i. Compensatory mitigation for permitted activities occurring within the benefit area of an established advanced mitigation project, if sufficient credits are not available from that advanced mitigation project, shall account for the anticipated net loss of ecological value due to the permitted activity and the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity.

7. Proposals for the establishment of advanced mitigation projects shall be processed as follows:

a. The secretary shall provide, without charging a fee, potential advanced mitigation sponsors an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.

b. Potential advanced mitigation sponsors shall submit a written request for the secretary to consider designation of an advanced mitigation project; the following must be provided with the request:

i. coastal use permit and Section 404 (Corps') permit numbers, if applicable;

ii. detailed drawings and project description unless such information is on file with the department;

iii. a statement describing the extent to which the project has been implemented;

iv. a statement identifying the current and anticipated source(s) of funding, particularly any public

funds or funds acquired as mitigation for a previously permitted/authorized activity; and

v. the advanced mitigation project initial evaluation fee of \$50.

c. The secretary shall review the request and within 20 days:

i. inform the potential advanced mitigation sponsor of the request's completeness; and

ii. if the request is not complete or if additional information is needed, the secretary shall advise the potential advanced mitigation sponsor, in writing, of the additional information necessary to evaluate and process the request.

d. Within 30 days of the secretary's acceptance of the request as complete, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in an on-site meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s) or received in writing within 20 days of any such meeting(s).

e. Within 60 days of the secretary's acceptance of the request as complete, the secretary shall render a preliminary determination as to whether the project would be acceptable as an advanced mitigation project, and:

i. if the project is preliminarily determined to be acceptable as an advanced mitigation project, the secretary shall inform the potential advanced mitigation sponsor of such determination; or

ii. if the project is preliminarily determined to be unacceptable as an advanced mitigation project, the secretary shall advise the potential advanced mitigation sponsor, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the project preliminarily acceptable as an advanced mitigation project.

f. Once the proposed project is preliminarily determined to be acceptable as an advanced mitigation project, the potential advanced mitigation sponsor shall obtain any necessary permits/authorizations in accordance with applicable state and federal laws.

g. Once all necessary permits/authorizations have been obtained, the potential advanced mitigation sponsor shall submit the advanced mitigation project establishment fee of \$100.

h. Within 10 days of receipt of the establishment fee, the secretary shall initiate negotiations among the department, the potential advanced mitigation sponsor, other state agencies, the Corps, and federal advisory agencies to develop a formal MOA. The MOA signed by the secretary and the advanced mitigation sponsor shall serve as the formal document which designates a project as an advanced mitigation project. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the advanced mitigation project by signing the MOA. The formal MOA shall, at a minimum:

i. provide a statement of purpose;

ii. define the area of benefit of the advanced mitigation project;

iii. specifically describe the wetland creation, restoration, protection, and enhancement measures to be implemented;

iv. establish the period of time that the advanced mitigation project would be operational;

v. identify the habitat assessment methodology utilized to establish the quantity of advanced mitigation credits, including an explanation of any calculations necessary to account for a project life which may differ from 20 years for marsh projects and which may differ from 50 years for forested wetland projects;

vi. sufficiently identify pre-project conditions to allow comparison at the time of the post-implementation habitat evaluation;

vii. specify the period of time allowed for project implementation, the period of time between completion of implementation and the post-implementation habitat evaluation (one year or more), the period of time allowed for the advanced mitigation sponsor to submit the post-implementation habitat evaluation fee of \$250, the period of time allowed for the habitat evaluation to be completed by the secretary, and the point in time when advanced mitigation credits would be made available to the advanced mitigation sponsor;

viii. if deemed necessary for the subject project, identify a schedule for review of habitat response subsequent to the post-implementation habitat evaluation;

ix. if deemed necessary for the subject project, identify the advanced mitigation sponsor's responsibilities for providing post-construction information (e.g., as-built drawings), monitoring information, or other information necessary for any habitat response reviews; and

x. if deemed necessary for the subject project, identify any requirements or mechanisms for performing or assuring maintenance of project features.

8. In accordance with the MOA, the advanced mitigation sponsor shall implement the advanced mitigation project and, at the appropriate time, submit the post-implementation habitat evaluation fee of \$250.

9. The secretary shall determine the quantity, by habitat type, of advanced mitigation credits available for

donation, sale, trade, or use from an advanced mitigation project within the time frame established in the MOA and in accordance with the following.

a. The secretary shall invite state advisory agencies, the Corps, federal advisory agencies, and the advanced mitigation sponsor to participate in the determination of advanced mitigation credits. The secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the advanced mitigation sponsor made during, or received in writing within 20 days of, each field investigation or other meeting held to determine advanced mitigation credits.

b. The total quantity of advanced mitigation credits (AAHUs or CHUs), by habitat type, attributable to the advanced mitigation project shall be determined by applying the methodology described in §724.C.

c. For projects which have been partially implemented prior to designation as an advanced mitigation project, advanced mitigation credits would be limited to those attributed to only those features implemented after execution of the MOA. Credits generated from features implemented as a result of public conservation or restoration funds or as a result of funds serving as mitigation for previous wetland losses shall not be considered part of the total advanced mitigation credits.

10. The use of advanced mitigation credits shall be in accordance with §724.G.6.

#### H. Individual Compensatory Mitigation Measures

1. A permit applicant may implement an individual mitigation measure or measures to satisfy the compensatory mitigation requirements of a proposed activity.

2. The secretary shall determine the acceptability of an individual compensatory mitigation measure(s) in accordance with §724.J.

3. The sufficiency of an individual mitigation measure or measures shall be determined in accordance with §724.C, best professional judgment, or a combination of the methodology presented in §724.C and professional judgment. When applying the methodology presented in §724.C, the secretary shall consider the probable life of the proposed mitigation measure and the future ability and willingness of the permit applicant to maintain the proposed mitigation.

#### I. Monetary Contributions to the Affected Landowner, Affected Parish, and/or the Louisiana Wetlands Conservation and Restoration Fund

1. Compensatory mitigation may be accomplished by monetary contribution to the affected landowner, affected parish, and/or the Louisiana Wetlands Conservation and Restoration Fund.

2. Such monetary contributions shall be used only to offset anticipated unavoidable net losses of ecological values and shall be selected as the compensatory mitigation option only in accordance with §724.J.

3. The secretary shall determine the amount of the monetary contribution by the formula: (anticipated unavoidable net loss of ecological value, measured in AAHUs) × (annual base mitigation cost) × (project years) = compensatory mitigation cost.

4. The determination of anticipated unavoidable net loss of ecological value, in AAHUs, that would result from the proposed activity shall be made in accordance with §724.C.

5. The annual base mitigation cost (ABMC) represents the cost of producing one AAHU for one year, within each habitat type within each hydrologic basin. The ABMC is based on example projects which could feasibly be constructed within each habitat type, within each basin, and was determined by the following formula: [sum for example projects (annual project cost / AAHUs produced)] / number of example projects.

6. ABMCs are provided in the following table:

Hydrologic Basin	Fresh Marsh	Inter. Marsh	Brack. Marsh	Saline Marsh	Hardwoods	Fresh Swamp
Pontchartrain	380	396	420	443	32	283
Breton	364	389	411	518	32	283
Mississippi R.	331	331			32	283
Barataria	373	389	411	443	32	283
Terrebonne	338	353	376	443	32	283

Hydrologic Basin	Fresh Marsh	Inter. Marsh	Brack. Marsh	Saline Marsh	Hardwoods	Fresh Swamp
Atchafalaya R.	350	350			32	283
Teche/Vermilion	369	387	412	455	32	283
Mermentau	369	387	412	455	32	283
Calcasieu/Sabine	359	387	412	455	32	283

7. The secretary may periodically update the table at §724.I.6 utilizing the best available data, in accordance with provisions of R.S. 49:953.

8. If compensatory mitigation is to be accomplished via monetary contribution, the issued permit shall include a condition which:

- a. identifies the monetary amount determined pursuant to §724.I.3-6; and
- b. specifies that the money would be transferred, upon request by the secretary, to the affected landowner, affected parish, or the Louisiana Wetlands Conservation and Restoration Fund as selected by the secretary in accordance with §724.I.9.a or §724.I.12-20.

9. To ensure compliance with such a permit condition, the permit shall not be issued:

- a. until the monetary contribution has been made to the affected landowner, provided that a plan for use of that money has been accepted by the secretary prior to, or during, the permit processing period, subsequent to coordination among the applicant, affected landowner, the Corps, and state and federal agencies which demonstrated an interest in participating in the selection of appropriate compensatory mitigation; or

- b. until the secretary has received a letter of credit on behalf of the permit applicant, pursuant to §724.I.10; or

- c. until it has been demonstrated to the secretary that a surety bond has been established by the permit applicant pursuant to §724.I.11.

10. If a letter of credit is utilized, the letter:

- a. shall ensure payment of the amount specified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund in the event that the permittee fails to comply with the permit condition required by §724.I.8;

- b. should be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" and shall not, in any situation, be provided by a depository that is "significantly under capitalized" or "critically under capitalized" as defined in Section 38 of the Federal Deposit Insurance Act;

- c. shall include a clause which causes an automatic renewal of the letter of credit until such time that the secretary returns the letter of credit to the permit recipient and/or depository; and

- d. shall require the secretary to return the letter of credit to the permit recipient and/or depository upon compliance with the permit condition.

11. If a surety bond is utilized, the bond:

- a. shall ensure payment of the amount specified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund in the event that the permit recipient fails to comply with the permit condition required by §724.I.8;

- b. shall be written by a surety or insurance company which, at the time of permit issuance, is on the latest U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana-domiciled surety or insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of the policyholder's surplus;

- c. shall have a term of five years; and

- d. shall require the secretary to release the bond to the permit recipient upon compliance with the permit condition.

12. Unless a plan for the use of compensatory mitigation funds has been accepted by the secretary pursuant to §724.I.9.a, the secretary shall request proposals for the utilization of compensatory mitigation money from each affected landowner which demonstrated an interest, pursuant to §724.J.5.a.vi or §724.J.6.d.vi, in receiving

compensatory mitigation. The secretary's request for proposals shall be made in writing and within 10 days of permit issuance. The request shall include the following:

- a. identification of the permitted activity for which payment of compensatory mitigation money is being required;
- b. information regarding the habitat type and ecological value (acreage and habitat value) to be strived for;
- c. announcement of the sum of money potentially available; and
- d. a request that the affected landowner provide to the secretary, in writing and within 25 days of receipt of such a request, a conceptual mitigation plan for use of the compensatory mitigation money.

13. Proposals for expenditure of compensatory mitigation money shall be acted upon as follows:

a. Within 10 days of receipt of a conceptual mitigation proposal, the secretary shall forward the proposal to those state and federal agencies which demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation. Concurrently, the proposal shall also be forwarded to the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation.

b. Over the following 60 days, the secretary shall interact with the interested agencies, the affected landowner, and the affected parish (if interested) to finalize the plan for use of the compensatory mitigation money. To be considered acceptable by the secretary, the plan must satisfy the criteria presented in §724.J.2-6. The 60-day period may be extended if requested by the landowner, provided that negotiations are being carried on in "good-faith."

c. If any permits/approvals are needed to implement the acceptable plan, the landowner shall submit the applications/requests to the appropriate entities within 20 days of the plan being deemed "acceptable."

d. If the affected landowner is unable to obtain the necessary approvals for a plan which had been deemed "acceptable" within 60 days of submittal due to concerns of, or lack of consent by, the Corps or state and federal advisory agencies, the secretary shall allow the landowner an additional 30 days to submit an alternate conceptual plan, and the alternate proposal shall be acted upon in accordance §724.I.13.

14. Once a plan is deemed "acceptable" and all necessary approvals have been obtained:

a. within 30 days, the landowner shall provide the secretary with a detailed written estimate of the total cost of implementing the plan;

b. within 10 days of receipt of the estimate, the secretary shall:

i. review the estimate for apparent completeness and accuracy, etc.; and

ii. if the estimate does not appear complete, accurate, and generally in order, identify the deficiencies and request the landowner to revise and submit a complete and accurate estimate; the revised estimate shall be submitted within 15 days of receipt of the secretary's request;

c. within 10 days of receipt of an apparently complete and accurate estimate, the secretary shall request in writing, the permit recipient to provide to the affected landowner a payment of money equal to the estimate, but not to exceed the amount identified in the issued permit;

d. the permit recipient shall make such payment to the affected landowner and provide evidence to the secretary that such payment has been made within 30 days of receipt of that request; the permit recipient's responsibility for this component of the compensatory mitigation requirement ceases upon the receipt of evidence by the secretary;

e. if such payment is made to the landowner:

i. the plan shall be initiated within 45 days of receipt of the payment unless the accepted plan includes seasonal considerations for implementing certain measures, such as grass or tree plantings;

ii. within 15 days of the end of the period allowed for initiation, the landowner shall inform the secretary in writing of the status of plan implementation;

iii. the plan shall be completely implemented within 90 days of initiation unless the accepted plan includes a specific time allotment for completion, or an unexpected circumstance provides a valid reason for delay;

iv. within 30 days of completion of the accepted plan, the landowner shall submit evidence that the accepted plan has been implemented, including a copy of invoices, bills, receipts demonstrating the total monetary expenditure;

v. if the landowner fails to implement the plan in a timely manner, the landowner shall make payment, equal to the amount received from the permit recipient, to the Louisiana Wetlands Conservation and Restoration Fund within 30 days of being requested by the secretary;

vi. if the landowner fails to implement the plan in a timely manner and fails to make payment to the Louisiana Wetlands Conservation and Restoration Fund in a timely manner, the landowner shall be subject to legal

remedies to compel the landowner to make such payment, and further, the landowner shall be ineligible to receive compensatory mitigation money in the future; and

vii. if the total expenditure for implementing the plan is less than the amount paid by the permit recipient, the landowner shall:

(a). utilize the difference within 60 days to implement an additional wetland creation, restoration, protection, and/or enhancement measure(s) approved by the secretary; or

(b). pay the difference to the Louisiana Wetlands Conservation and Restoration Fund;

f. if the permit recipient fails to make the requested payment to the landowner within 60 days of the secretary's request, the secretary shall pursue payment via the letter of credit or surety bond, unless the permit recipient provides evidence that the permitted activity has not been implemented and the permit is returned to the secretary;

g. if the secretary pursues payment via the letter of credit or surety bond:

i. the resultant money shall be deposited into the Louisiana Wetlands Conservation and Restoration Fund; and

ii. the permit recipient shall not be allowed, in the future, to accomplish required compensatory mitigation via the monetary contribution option; and

iii. the secretary shall negotiate with the affected landowner(s) on an individual case basis to formulate an acceptable plan for use of that money on the affected landowner's property; or

iv. if an acceptable plan can not be negotiated for the affected landowner's property, the money shall be utilized pursuant to §724.I.21.

15. The secretary may delay the process of formulating a plan for utilizing compensatory mitigation money for the purpose of combining the compensatory mitigation money from more than one permitted activity, provided that:

a. prior to delaying the process, the secretary considers the views of those state and federal agencies which demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation;

b. prior to delaying the process, the secretary considers the views of the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation;

c. the time elapsed from issuance of the first permit to implementation of the mitigation measure(s) would not be expected to exceed two years; and

d. the landowner (or parish) is aware, and can demonstrate, that additional impacts are likely to be proposed on the ownership (or within the parish) within 180 days, and the landowner (or parish) has obtained the necessary permits/approvals for a specific mitigation measure that would require an amount of money greater than that generated from a single permitted activity.

16. A landowner's "right" to utilize the required compensatory mitigation money would cease:

a. if the landowner failed to comply with the requests described in §724.J.5.a.vi, §724.J.6.d.vi, or §724.I.12.d; or

b. if the secretary determines, during the interaction period described in §724.I.13.b, that the attempt to derive a plan mutually acceptable to the landowner and the secretary is futile; or

c. if the landowner failed to comply, without good reason, within the time periods described in §724.I.13.c-d and §724.I.14.a, b, and e; or

d. if the necessary permits/approvals described at §724.I.13.c have not been obtained within 180 days of the submittal of applications/requests, due to failure on the part of the landowner to provide, in a timely manner, adequate information or other material necessary for processing the applications/requests; or

e. if, following an attempt to combine compensatory mitigation money from more than one permitted activity, pursuant to §724.I.15, the mitigation measure is not implemented within two years.

17. If a landowner's "right" to utilize the compensatory mitigation money should cease, the secretary shall, in writing and within 10 days of such cessation:

a. inform the landowner that his/her right to utilize the compensatory mitigation money has ceased; and

b. inform the affected parish of the potential availability of that money for implementing wetland creation, restoration, protection, and/or enhancement measures; such notification shall include the items identified in §724.I.12.a-d.

18. Proposals for expenditure of compensatory mitigation money by a parish shall be acted upon in the

manner described for a landowner in §724.I.13 and implemented in the manner described for a landowner in §724.I.14-15.

19. A parish's "right" to utilize the compensatory mitigation money would cease if the conditions described in §724.I.16 existed with regard to the parish.

20. If a parish's "right" to utilize the required compensatory mitigation money should cease, the secretary shall within 10 days of such cessation:

- a. inform the parish that its right to utilize the compensatory mitigation money has ceased; and
- b. request the permit recipient to provide payment of the amount of money identified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund within 60 days of receipt of that request; the permit recipient's responsibility for this component of the compensatory mitigation requirement ceases upon the receipt of such payment by the secretary.

21. If such payment is made to the Louisiana Wetlands Conservation and Restoration Fund, the secretary shall select a specific wetland creation, restoration, protection, and/or enhancement measure(s) to be implemented with that money, following consideration of the comments of those state and federal agencies which demonstrated an interest in participating in the selection of appropriate compensatory mitigation during permit processing and utilize that money to implement the selected measure.

22. If the permit recipient does not make the requested payment to the Louisiana Wetlands Conservation and Restoration Fund within 60 days of the secretary's request, the secretary shall pursue payment via the letter of credit or surety bond, unless the permit recipient provides evidence that the permitted activity has not been implemented and the permit is returned to the secretary.

23. If the secretary pursues payment via the letter of credit or surety bond:

- a. the resultant money shall be deposited into the Louisiana Wetlands Conservation and Restoration Fund and utilized pursuant to §724.I.21; and
- b. the permit recipient shall not be allowed, in the future, to accomplish required compensatory mitigation via the monetary contribution option.

#### J. Selecting Compensatory Mitigation

1. In selecting compensatory mitigation, the secretary shall consider the recommendations and comments of those state and federal agencies which demonstrated an interest, during permit processing, in participating in the selection of appropriate compensatory mitigation. The secretary shall also consider the recommendations and comments of the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation.

2. The secretary shall ensure that the selected compensatory mitigation, in order of priority, is sufficient (§724.J.3), properly located (§724.J.4), and accomplished by the most desirable available/practicable option (§724.J.5-6).

3. The selected compensatory mitigation proposal must completely offset the unavoidable net loss of ecological value, unless a variance is granted pursuant to §724.K;

4. To be considered properly located, the compensatory mitigation must be selected according to the following prioritized criteria:

- a. must have an anticipated positive impact on the ecological value of the Louisiana Coastal Zone;
- b. should be on-site if the opportunity exists and if the compensatory mitigation would contribute to the wetland health of the hydrologic basin;
- c. should be located, in accordance with R.S. 214.41.E, on the affected landowner's property, provided the secretary determines that the proposed mitigation is acceptable and sufficient;
- d. shall be located within the same hydrologic basin as the proposed impact, unless no feasible alternatives for compensatory mitigation exist in that basin; and
- e. shall, in order of preference, be located within the same habitat type as the proposed impact; or produce ecological values which would be similar to those lost as a result of the proposed activity, despite being located in a different habitat type; or contribute to the overall wetland health of the hydrologic basin, despite being located in a different habitat type.

5. The procedure for selecting compensatory mitigation for proposed activities which would adversely impact vegetated wetlands on only one landowner's property shall be as follows:

- a. By the tenth day of the public notice period; or within 10 days of receipt of a modification request from the applicant, if such modification would result in a substantive change in the anticipated impact (acreage or habitat type); or within five days of determining that the individual use may be authorized under a general permit, the secretary shall:

- i. determine the habitat type and extent (i.e., acreage) of anticipated impact to the affected landowner;
- ii. in writing, provide to the applicant basic information regarding the anticipated impact (acreage, habitat type);
- iii. in writing, request the applicant to submit to the secretary in writing and within 20 days of such request, a compensatory mitigation proposal which has been coordinated with the affected landowner; alternatively, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, the applicant may propose to make a monetary contribution for compensatory mitigation pursuant to §724.I; however, if the applicant proposes to make a monetary contribution, such a proposal must be submitted within 10 days of the secretary's request;
- iv. in writing, provide to the affected landowner basic information regarding the anticipated impact (acreage, habitat type);
- v. in writing, suggest to the landowner, that he/she assist the applicant in developing a compensatory mitigation proposal; and
- vi. in writing, request that the landowner submit to the secretary, in writing and within 30 days of such request, a statement which would:
  - (a). indicate acceptance of the applicant's compensatory mitigation proposal; or
  - (b). explain why the applicant's compensatory mitigation proposal is not acceptable and suggest an alternative compensatory mitigation proposal which would be acceptable; or
  - (c). propose a landowner-authored compensatory mitigation plan if the applicant has failed to contact the landowner or if the applicant has failed to develop a mutually acceptable compensatory mitigation plan; or
  - (d). request, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, receipt of a monetary contribution for compensatory mitigation, with a specific proposal for the use of that money to be developed pursuant to §724.I; however, if the landowner opts to request receipt of a monetary contribution, such a request must be submitted within 15 days of the secretary's request.
- b. An applicant's failure to submit a compensatory mitigation proposal as described in §724.J.5.a.iii may cause an interruption of the permit processing period identified at §723.C.4.f, until such time that an acceptable and sufficient mitigation plan can be developed.
- c. A landowner's failure to submit the statement described in §724.J.5.a.vi would forfeit the landowner's "right" to require that the compensatory mitigation for the subject activity be performed on the subject property, but not necessarily preclude compensatory mitigation from occurring on the subject property.
- d. All compensatory mitigation proposals submitted by the landowner or applicant; negotiated among the landowner, applicant, and the secretary; suggested by state advisory agencies, the Corps, or federal advisory agencies; or developed by the secretary shall be considered.
- e. Subject to §724.J.1-4, the secretary shall select the compensatory mitigation option according to the following priorities, unless there is a valid reason for altering the order of priority:
  - i. acquisition of mitigation credits, if the affected landowner has an approved mitigation bank;
  - ii. use of advanced mitigation credits if the affected landowner has an approved advanced mitigation project, if allowable pursuant to §724.G.6;
  - iii. if the proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, monetary contribution pursuant to §724.I. Valid reasons for altering the order of priority, and the altered priority, include but are not limited to the following:
    - (a). if the Corps has identified an individual compensatory mitigation proposal which would be acceptable and sufficient to the affected landowner (if interested in receiving compensatory mitigation), the applicant, and the secretary, such proposal shall be given higher priority than the monetary contribution; or
    - (b). if the affected landowner forfeited his/her right to "require" compensatory mitigation pursuant to §724.J.5.c, and the affected parish does not have a use for the monetary contribution which has been preapproved by the secretary and the Corps, and there is an available and appropriate mitigation bank or advanced mitigation site not on the affected landowner's property, the acquisition of mitigation bank credits or advanced mitigation credits shall be given higher priority than the monetary contribution;
    - iv. individual compensatory mitigation proposal on the affected landowner's property;
    - v. acquisition of credits from a mitigation bank not on the affected landowner's property;
    - vi. use of advance mitigation credits from an advanced mitigation project not on the affected landowner's property, if allowable pursuant to §724.G.6;



- vii. individual mitigation proposal not on the affected landowner's property;
- viii. if the proposed activity would directly impact more than 5.0 acres but no more than 10.0 acres, monetary contribution pursuant to §724.I.
- f. Monetary contributions shall not be an accepted form of compensatory mitigation if the proposed activity would directly impact more than 10.0 acres.
- 6. For proposed activities which would impact vegetated wetlands on more than one landowner's property:
  - a. By the tenth day of the public notice period; or within 10 days of receipt of a modification request from the applicant, if such modification would result in a substantive change in the anticipated impact (acreage or habitat type); or within five days of determining that the individual use may be authorized under a general permit, the secretary shall request the applicant to provide a map(s) to the secretary with accurate scale and sufficient detail to determine the extent of impact (i.e., acreage) to each landowner identified pursuant to R.S. 49:214.30.C.2.
  - b. At this time, the permit processing period identified at §723.C.4.f shall be interrupted until the requested map(s) has been provided.
  - c. When the anticipated impact to a given landowner would be less than 1.0 acre, it shall be considered unacceptable to allow that landowner to require compensatory mitigation to be performed on his/her property, unless it is determined to be acceptable by the secretary in certain special cases.
  - d. Within 10 days of receipt of the map(s) described in §724.J.6.a, the secretary shall:
    - i. determine the habitat type and extent (i.e., acreage) of anticipated impact to each affected landowner;
    - ii. in writing, provide to the applicant a list of affected landowners whose anticipated direct impact is 1.0 acre or greater and basic information regarding the anticipated impact (acreage, habitat type) to each of those landowners and for the entire project;
    - iii. in writing, request the applicant to submit to the secretary in writing and within 20 days of such request, a compensatory mitigation proposal which has been coordinated among all affected landowners whose anticipated direct impact is 1.0 acre or greater; alternatively, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, the applicant may propose to make a monetary contribution for compensatory mitigation pursuant to §724.I; however, if the applicant proposes to make a monetary contribution, such a proposal must be submitted within 10 days of the secretary's request;
    - iv. in writing, provide to each landowner whose anticipated direct impact is 1.0 acre or greater, basic information regarding the anticipated impact (acreage, habitat type) to the subject property and for the entire project;
    - v. in writing, suggest to each of those landowners, that they assist the applicant in developing a compensatory mitigation proposal; and
    - vi. in writing, request that each of those landowners submit to the secretary, in writing and within 30 days of such request, a statement which would:
      - (a). indicate acceptance of the applicant's compensatory mitigation proposal; or
      - (b). explain why the applicant's compensatory mitigation proposal is not acceptable and suggest an alternative compensatory mitigation proposal which would be acceptable; or
      - (c). propose a landowner-authored compensatory mitigation plan if the applicant has failed to contact the landowner or if the applicant has failed to develop a mutually acceptable compensatory mitigation plan; or
      - (d). request, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact a total of 5.0 acres or less, receipt of a monetary contribution for compensatory mitigation, with a specific proposal for the use of that money to be developed pursuant to §724.I; however, if the landowner opts to request receipt of a monetary contribution, such a request must be submitted within 15 days of the secretary's request.
  - e. An applicant's failure to submit a compensatory mitigation plan as described in §724.J.6.d.iii may cause an interruption of the permit processing period identified at §723.C.4.f, until such time that an acceptable and sufficient mitigation plan can be developed.
  - f. A landowner's failure to submit the statement described in §724.J.6.d.vi would forfeit the landowner's "right" to require that the compensatory mitigation for the subject activity be performed on the subject property, but not necessarily preclude compensatory mitigation from occurring on the subject property.
  - g. All compensatory mitigation proposals submitted by the landowner(s) or applicant; negotiated among the landowner(s), applicant, and the secretary; suggested by state advisory agencies, the Corps, or federal advisory agencies; or developed by the secretary shall be considered.

h. In situations where landowners have proposed separate/multiple compensatory mitigation measures, the secretary shall consider the following factors in selecting compensatory mitigation:

- i. cost effectiveness of offsetting ecological value losses via separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s);
- ii. practicability, on the part of the secretary, of confirming/enforcing implementation, operation, and maintenance of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s); and
- iii. the long-term ecological benefits of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s).

i. The secretary shall select the compensatory mitigation option according to the following priorities, unless there is a valid reason for altering the order of priority:

- i. if an affected landowner has an approved mitigation bank, acquisition of mitigation credits, at least for that portion of the impact which occurs on that landowner's property;
- ii. if an affected landowner has an approved advanced mitigation project, use of advanced mitigation credits, for that portion of the impact which occurs on that landowner's property, if allowable pursuant to §724.G.6;

iii. if the proposed activity would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, monetary contribution pursuant to §724.I. Valid reasons for altering the order of priority, and the altered priority, include but are not limited to the following:

- (a). if the Corps has identified an individual compensatory mitigation proposal which would be acceptable and sufficient to the affected landowners (if interested in receiving compensatory mitigation), the applicant, and the secretary, such proposal shall be given higher priority than the monetary contribution, or
- (b). if the affected landowners forfeited their right to "require" compensatory mitigation pursuant to §724.J.5.c, and the affected parish does not have a use for the monetary contribution which has been preapproved by the secretary and the Corps, and there is an available and appropriate mitigation bank or advanced mitigation site not on an affected landowner's property, the acquisition of mitigation bank credits or advanced mitigation credits shall be given higher priority than the monetary contribution;
- iv. individual compensatory mitigation measure(s) acceptable to all interested landowners;
- v. individual compensatory mitigation measure(s), that would have a positive effect on one or more, but not necessarily all, of the interested landowner's properties;
- vi. acquisition of credits from a mitigation bank not on an affected landowner's property;
- vii. use of advanced mitigation credits from an approved advanced mitigation project not on an affected landowner's property, if allowable pursuant to §724.G.6;
- viii. individual mitigation proposal not on an affected landowner's property;
- ix. if the proposed activity would directly impact more than 5.0 acres but no more than 10.0 acres, monetary contribution pursuant to §724.I.
- j. Monetary contributions shall not be an accepted form of compensatory mitigation if the proposed activity would directly impact more than 10.0 acres.

#### K. Variances from Compensatory Mitigation Requirements

1. Pursuant to the remainder of this Section, the secretary shall grant a full or partial variance from the compensatory mitigation requirement (variance) when a permit applicant has satisfactorily demonstrated to the secretary:

- a. that the required compensatory mitigation would render impracticable an activity proposed to be permitted; and
- b. that such activity has a clearly overriding public interest.

#### 2. Variance Request Requirements

a. Following the application of §724.B; development of a compensatory mitigation option(s) pursuant to §724.J; and presentation by the secretary (in accordance with §723.C.8.b) of a draft permit, including conditions for compensatory mitigation, the permit applicant may file a variance request with the secretary.

- b. The variance request must be filed and resolved prior to initiation of the proposed activity.
- c. The variance request must be filed in writing and include the following:
  - i. a statement explaining why the proposed compensatory mitigation requirement would render the proposed activity impracticable, including supporting information and data; and
  - ii. a statement demonstrating that the proposed activity has a clearly overriding public interest by explaining why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of

compensating for wetland values lost as a result of the activity, including supporting information and data.

d. As part of the requirements of §724.K.2.c, requests for variances for mineral exploration, extraction, and production activities shall include production projections, including supporting geologic and seismographic information; a projected number of new jobs; and the expected duration of such employment opportunities. The secretary shall ensure that any proprietary information is adequately protected.

e. As part of the requirements of §724.K.2.c, requests for variances for mineral transportation activities shall include information regarding the amount of product proposed to be transported; the destination of the product; a projected number of new jobs and their location; and the expected duration of such employment opportunities. The secretary shall ensure that any proprietary information is adequately protected.

f. As part of the requirements of §724.K.2.c, requests for variances for flood protection facilities shall include the following information:

i. a detailed description of the existing infrastructure which would be protected by the flood protection facility, including public facilities (e.g., roads, bridges, hospitals, etc.), residential areas (including approximate number of homes and associated residents), industries, and businesses;

ii. detailed drawings or photographic documentation depicting the locations of the above infrastructure components;

iii. a detailed description of the extent and severity of past flooding problems and projections of potential damages due to future flooding events; and

iv. a description of nonstructural and structural flood protection and reduction measures which have been undertaken or implemented in the past, or are reasonably expected to occur in the future.

g. As part of the requirements of §724.K.2.c, all requests for variances shall include cost estimates for implementing the proposed project and performing compensatory mitigation.

h. The request shall be accompanied with a nonrefundable filing and hearing fee of \$250.

### 3. Review and Notification by the Secretary

a. The secretary shall review a variance request and inform the applicant of its completeness within 15 days of receipt.

b. If the variance request is not complete or if additional information is needed, the secretary shall request from the applicant, the additional information necessary to evaluate and process the request. If the applicant fails to respond to such request within 30 days, the secretary may advise the applicant that his request will be considered withdrawn unless the applicant responds within 15 days of such advisement. If the request is considered withdrawn, to reinstate the request, the applicant will be required to resubmit the request, accompanied with an additional nonrefundable filing and hearing fee of \$250.

c. The secretary shall not issue a variance prior to publishing a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement", and accepting and considering public comments.

d. Within 30 days of the secretary's acceptance of the variance request as complete, the secretary shall review the request, considering the criteria set forth in §724.K.1, and either:

i. notify the applicant of the secretary's intention to deny the request, including his rationale; or

ii. determine that the variance request warrants further consideration and publish a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

e. "Notices of Intent to Consider a Variance from the Compensatory Mitigation Requirement" shall be published in the official state journal, mailed to Joint Public Notice mailing recipients and all persons that submitted comments on the original public notice, and provided to the local governing authority of the parish or parishes where the proposed activity would take place.

f. "Notices of Intent to Consider a Variance from the Compensatory Mitigation Requirement" shall contain the following:

i. name and address of the applicant;

ii. the location and description of the proposed activity;

iii. a description of the area to be directly impacted (acres and habitat types) and quantification of anticipated unavoidable net losses of ecological value;

iv. a description of the compensatory mitigation plan proposed as a condition of permit issuance;

v. a description of the nature and extent of the variance;

vi. a summary of the information presented by the applicant in fulfillment of §724.K.2.c-g;

vii. an unsigned secretarial "Statement of Finding" regarding why the proposed compensatory mitigation requirement may render the proposed activity impracticable and comparing the public interest benefits of the proposed activity to the public interest benefits of requiring compensatory mitigation for the wetland values lost

as a result of the activity; and

viii. notification that public comments, including requests for public hearings, will be accepted for 25 days from the date of publication of the "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

4. Public Hearings on Variance Requests

a. A public hearing shall be held when:

i. requested by the applicant following the secretary announcing his intention to deny a variance request;

ii. the secretary determines that a public hearing is warranted, following a review of comments received during the period described in §724.K.3.f.viii; or

iii. the conditions described at §723.C.6.c are met.

b. Public hearings shall be conducted in accordance with §727.

5. Final Variance Decision

a. The secretary shall issue a final variance decision based on full consideration of the criteria set forth in §724.J.1, information submitted by the applicant, comments received during the public comment period, and comments received at the public hearing if one is held. A "Statement of Finding" described in §724.K.5.b shall be prepared:

i. within 15 days of the closing of the public comment period if the secretary determines that a public hearing is not warranted; or

ii. within 15 days of the public hearing if one is held.

b. The secretary shall prepare a signed final "Statement of Finding" which explains the reasons for denying a variance or describes why the proposed compensatory mitigation requirement would have rendered the proposed activity impracticable, describes why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of requiring compensation for wetland values lost as a result of the activity; and describes the nature and extent of the granted variance. This statement shall be part of the permit record, available to the public, and attached to the granted permit.

c. The final variance decision is subject to reconsideration as described at R.S. 49:214.35.

6. Duration of Variance

a. A variance shall be valid only for the original permit recipient. Any party receiving a transferred permit may seek a variance, through the procedures established by §724.K.2-5.

b. A variance shall be valid for the initial terms of the permit to which it is specifically related, unless the variance is modified, or revoked in accordance with §724.K.7.

c. The secretary may extend a variance, in accordance with §723.D.5., concurrently with the extension of the permit to which it is specifically related.

7. Modification or Revocation of Variance

a. If requested by the applicant, the secretary shall consider modifying a variance, according to the procedures described in §724.K.2-5.

b. A third party may request the secretary to consider a modification or revocation of a variance, based on lack of conformance to the criteria set forth in §724.K.1.

c. The secretary may revoke a variance, if:

i. there are inaccuracies in the information furnished by the applicant during the permit or variance review period; or

ii. there is any violation of the conditions and limitations of the permit to which the variance is specifically related; or

iii. there is any violation of the conditions and limitations of the variance; or

iv. the applicant misrepresented, without regard to intent, any material facts during the variance or permit review period; or

v. the actual public interests of the activity turn out to be significantly less than that estimated by the applicant in its statements filed in association with the variance request review.

d. The procedure for revoking a variance shall be as follows:

i. The secretary shall, in writing, inform the variance holder that revocation is being considered, providing reasons for the potential revocation and advising the variance holder that he will be given, if requested within 10 days from receipt of the notice, an opportunity to respond to the reasons for potential revocation.

ii. After consideration of the variance holder's response, or if no response is received, the secretary shall provide written notice to the variance holder, allowing the variance to remain valid or explaining newly

imposed compensatory mitigation requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995).

#### Subchapter D. Local Coastal Management Programs

##### §725. Development, Approval, Modification, and Periodic Review of Local Coastal Management Programs

A. Letter of Intent. Parishes intending to apply for grants to prepare a local coastal management program (LCMP) shall notify the secretary of DNR by sending a letter of intent approved by the parish Police Jury or Council.

##### B. Program Development

1. The process for developing a local program will consist of:

a. A division of the parish's coastal zone into units that have similar environmental and natural resource characteristics (environmental management units) and an identification and mapping of the features, resources, and resource users of those units.

b. An analysis of the projected social and economic growth for the parish. This analysis must include projected population growth, projected expansion of economic sectors, estimated demand for and use of land, and an assessment of how these projected changes will affect the natural resources of each management unit as well as the parish as a whole.

c. An identification of existing and potential resource-use conflicts including their location and severity. Identified problems should be mapped to the extent possible.

d. An identification of particular areas, if any, within the parish requiring special management as a result of their unique natural resource or development potentials.

e. The development of goals, objectives and policies for the management of the parish's coastal zone. This shall include those goals and objectives applicable to the entire parish coastal zone and specific objectives and priorities of use for each management unit and identified particular area, if any. Except as specified in Subsection D.1.d below, these policies, objectives and priorities of uses must be consistent with the policies and objectives of the SLCRMA, as amended, and the state guidelines.

f. The development of procedures providing for the full participation of federal, state, local and municipal government bodies and the general public in the development and implementation of the parish program.

g. The development of the necessary authorities, procedures, and administrative arrangements for reviewing, issuing, and monitoring permits for uses of local concern.

h. The development of special procedures and methods for considering uses within special areas designated pursuant to §214.29 of the SLCRMA, if any, and the impacts of uses on the special areas.

i. The development of special procedures and methods for considering uses of greater than local benefit and uses affecting state or national interests.

##### C. Program Content

1. Local programs may be submitted for approval after being developed in accordance with Subsection B and shall consist of:

a. a summary of the local program;

b. maps and descriptions of the natural features, resources, and existing land use in each management unit. These maps shall depict the division of the coastal areas into coastal waters and wetlands, transitional areas, fastlands, and lands more than 5 feet above mean sea level;

c. the results of the social and economic analysis carried out pursuant to Subsection B.1.b, above;

d. a description of those existing and future resource-use conflicts identified pursuant to Subsection B.1.c, above;

e. an identification of those particular areas, if any, requiring special management as described in Subsection B.1.d above, as well as the special policies and/or procedures to be applied to these areas;

i. statement of the goals, objectives, policies, and priorities of uses included in the program, as described in Subsection B.1.e.;

ii. a statement assuring that the policies of the local program are consistent with the policies and objectives of the SLCRMA, as amended, and the state guidelines and that the local program shall be interpreted and administered consistently with such policies, objectives, and guidelines;

f. a description of the authorities and administration arrangements regulating uses of local concern, for reviewing, issuing, and monitoring local coastal use permits, and for enforcing the local program, including:

i. a concise explanation of how the local program's coastal management process is to work;

- ii. a description and listing of those areas and uses that will require local coastal use permits;
- iii. an illustrative list of particular activities which occur either in fastlands or on lands more than 5 feet above mean sea level that have, or may have, direct and significant impacts on coastal waters;
- iv. an analysis of all ordinances included in the local program demonstrating that the effect of such ordinances, when applied to uses not subject to the local coastal use permit program, would result in compliance with the goals and provisions of the SLCRMA, as amended, the objectives of the Louisiana Coastal Resources Program (LCRP), and the policies of the coastal use guidelines.
- v. a description of the administrative means by which the parish will coordinate with other governmental bodies during program implementation regarding:
  - (a). local program implementation, including copies of any interagency or intergovernmental agreements;
  - (b). multiparish environmental considerations;
  - (c). consideration by the parish of regional, state, or national interests; and
  - (d). regional, state, or national plans affecting the parish coastal zone and other projects affecting more than one parish;
- vi. certified copies of all ordinances, plans, programs, and regulations proposed to be included in the program;
- vii. a resolution from the governing body of the parish expressing approval of the local program as submitted and its intent to implement the submitted program subsequent to state approval;
- g. documentation that the parish has provided a full opportunity for governmental and public involvement and coordination in the development of the local program. It must be shown that:
  - i. at least one public hearing was held in the coastal zone on the total scope of the proposed program;
  - ii. public notice of the availability of the draft proposed program was given at least 30 days prior to the hearing. Copies of the program must have been available for distribution to relevant state, federal and local governmental agencies, and the general public and were available for public inspection at reasonable hours at all libraries within the parish, the offices of the police jury, and the city or town hall of all the municipalities in the coastal zone;
  - iii. full consideration was given to comments received during program development and the public hearings.

#### D. Program Approval

1. Local programs may be submitted for approval after promulgation of these rules and the state guidelines. The following procedures shall apply:
  - a. Fifteen copies of the complete proposed local program shall be submitted to the secretary. The local government shall have additional copies available for distribution upon request. The secretary shall, within fifteen days of the filing of a complete program give public notice of the submittal of the proposed local program, of the availability of copies of the program for public review and of the date, time and place of a public hearing on the program and request public comment. The secretary shall give full consideration to all comments received.
  - b. The secretary shall, within 90 days of the giving of public notice, either approve the local program or notify the local government of the specific changes which must be made in order for it to be approved.
  - c. In order to approve the local program, the secretary must find that:
    - i. the program is consistent with the state guidelines and with the policies and objectives of the SLCRMA;
    - ii. the program submitted for approval contains all the elements required by Subsection C above and that the materials submitted are accurate and are of sufficient specificity to provide a basis for predictable implementation of the program;
    - iii. that the proposed program, and the policies, objectives, and priorities of use in the program, are of a sufficient comprehensiveness and specificity to address the identified resource-use conflicts and are consistent with the goals of the SLCRMA, the objectives of the LCRP, and the policies of the coastal use guidelines;
    - iv. full opportunity has been provided for federal, state, local and municipal governmental bodies and the general public to participate in the development of the program pursuant to Subsection C.1.g above;
    - v. the local government has included within the program all applicable ordinances and regulatory or management programs which affect the coastal zone; that these authorities are of sufficient scope and specificity to regulate uses of local concern; that the regulatory program meets all requirements for procedures and time frames established by the SLCRMA and regulations of the department; that sufficient authority is provided to enforce the

local program, including provisions for those penalties provided by §214.36 of the SLCRMA, and that the program has met all substantive requirements of the SLCRMA and the regulations adopted pursuant thereto;

d. in reviewing a local program for consistency with the state guidelines the secretary, acting jointly with the secretaries of the Department of Natural Resources and the Department of Wildlife and Fisheries, may make reasonable interpretations of the state guidelines, insofar as they affect that particular program, which are necessary because of local environmental condition or user practices. Local programs that may be inconsistent in part with the state guidelines may be approved notwithstanding the conflicts if the secretaries find that:

i. the local environmental conditions and/or user practices are justified in light of the goals of Act 361, (SLCRMA) the objectives of the LCRP, and the policies of the state guidelines;

ii. approval would result in only minimal and inconsequential variance from the objectives and policies of the act and the guidelines; and

iii. the local program provides special methods to assure that the conflicts remain minimal and inconsequential;

e. the local program shall become effective when approved by the secretary and officially adopted by the local government.

#### E. Modifications

1. Any significant proposed alteration or modification to an approved local program shall be submitted to the secretary for review and approval along with the following:

a. a detailed description of the proposed change;

b. if appropriate, maps of sufficient scale and detail depicting geographically how the program would be changed.

c. an explanation of how the proposed change would better accommodate local conditions and better serve to achieve the objectives of the state program and the local program;

d. a resolution from the local government expressing approval of the modification as submitted and its intent to implement the change subsequent to state approval;

e. all parish ordinances relevant to the proposed modification;

f. any comments from governmental units that may be affected by the proposed modification;

g. the record of the public hearing on the proposed modification, including any written testimony or comments received; and

h. documentation that the parish has provided a full opportunity for governmental and public involvement in the development of the proposed modification.

2. Significant alterations or modifications shall be reviewed and approved pursuant to Subsection B, C, and D above. They must be consistent with the guidelines and the state program and meet all pertinent substantive and procedural requirements.

3. An alteration or modification shall become effective when approved by the secretary and officially adopted by the local government. If a proposed alteration or modification is not approved, the provisions of the previously approved program shall remain in effect unless specifically rejected by the governing body of the parish.

#### F. Periodic Review of Programs

1. Local governments shall submit an annual report on the activities of an approved local program. This annual report shall include:

a. the number, type, and characteristics of applications for coastal use and other permits;

b. the number, type, and characteristics of coastal use and other permits granted, conditioned, denied, and withdrawn

c. the number, type, and characteristics of permits appealed to the courts;

d. results of any appeals;

e. a record of all variances granted;

f. a record of any enforcement actions taken;

g. a description of any problem areas within the state or local program and proposed solutions to any such problems;

h. proposed changes in the state or local program.

2. The administrator shall from time to time, and at least every two years, review the approved local programs to determine the extent to which the implementation of the local program is consistent with and achieving the objectives of the state and local programs.

3. Should the secretary determine that any part of the local program is not consistent with the state program or is not achieving its stated objectives or is not effective, he shall notify the local government and recommend

changes and modifications which will assure consistency with, and achievement of, the objectives of the overall coastal program or improve the efficiency and effectiveness of the local program.

4. If the local government fails to give official assurance within one month after receipt of the secretary's notice that it intends to modify the local program in a timely manner to conform to these recommendations, or thereafter fails to make the necessary changes within three months, the secretary may, after public notice, revoke approval of the local program. In such an event the local government shall no longer have the authority to permit uses of local concern or otherwise carry out the functions of an approved program and will lose eligibility to receive management funds other than those funds appropriate and necessary to make the necessary changes. If and when the secretary determines that the local program has been appropriately modified to meet his recommendations pursuant to Subsection B above, he may, after public notice, reinstate approval.

G. Funding of Local Programs

1. All funds provided to local governments by the department for program development or implementation shall be subject to the following:

a. Any state or federal funds provided to local governments for development or implementation of approved local program shall be by contract with the department. Any such financial assistance shall be subject to these rules and any applicable federal requirements.

b. Such financial assistance shall be on a matching fund basis. The required local match shall be determined by the secretary.

c. Eligibility of a local government for such financial assistance shall be determined by the administrator pursuant to these rules and the contractual requirements of the department.

d. Local programs shall receive an equitable share of the total federal money received by the department from the Office of Coastal Zone Management for Section 306 [of the federal Coastal Zone Management Act, as amended] implementation.

2. Planning and development assistance funding shall be subject to the following:

a. Funding for planning and development of local programs shall be available. The level of such funding shall be at the discretion of the administrator and as provided for herein. A base level of funding will be made available to each parish in the coastal zone which does not have an approved program. Any unutilized allocated funds will be available for use by other parishes at the discretion of the administrator for special planning and development projects.

b. To be eligible to continue receiving planning and development assistance, the local government must be making substantial progress toward finalization of an approvable local program.

c. Planning and development funds may only be used to plan for and develop those elements of a local program required by Subsections B and C of these rules and the SLCRMA.

d. Planning and development assistance will be provided by the department for two years from the date of federal approval of the state program or until a parish receives an approved local program, whichever is sooner.

3. The department will make funds available to local governments for costs incurred in applying for approval from the Department, including printing and advertising, holding required public hearings and making copies of the local program available to governmental bodies and the general public.

4. Implementation assistance funding shall be subject to the following:

a. Funding for implementation of a local program shall be available after approval of the local program by the department. A local program shall be eligible for such assistance only so long as it continues to be an approved program.

b. The administrator shall establish and modify, as appropriate, a reasonable allocation formula utilizing objective criteria regarding the coastal zone of the parish, including:

- i. population;
- ii. total surface area;
- iii. wetland area;
- iv. number of permits; and
- v. length of interface between urban and agricultural areas and wetland areas;

c. Each parish with an approved program shall be assured of a base level of funding, with additional funding based upon the allocation formula. Any unutilized implementation funds will be available, at the discretion of the administrator, for use by other parishes for special planning, implementation or management projects.

d. Implementation funds may only be used to implement the approved local program, carry out planning for or development of approvable alterations or modifications in the local program, and to update or revise the data base utilized by the local program.



H. Written Findings. All findings and determinations required by these rules shall be in writing and made part of the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### Subchapter E. Hearings

##### §727. Public Hearings

A. Scope. This regulation is applicable to all public hearings pursuant to the SLCRMA. All such public hearings shall be nonadjudicatory public proceedings conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed action which affords to the public the opportunity to present their views and opinions on such action.

##### B. Public Notice

1. Public notice shall be given at least 30 days in advance of any public hearings. Notice shall be sent to all persons requesting notices of public hearings and shall be posted in all governmental bodies having an interest in the subject matter of the hearing. Such notice may be limited in area consistent with the nature of the hearing.

2. The notice shall contain the time, place, and nature of hearing; and the location of materials available for public inspection.

C. Time and Place. In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the interested public.

##### D. Presiding Officer

1. The governmental body holding the hearing shall designate a staff member to serve as presiding officer. In cases of unusual interest the administrator shall have the power to appoint such person as he deems appropriate to serve as the presiding officer.

2. The presiding officer shall establish a hearing file consisting of such material as may be relevant or pertinent to the subject matter of the hearing. The hearing file shall be available for public inspection.

E. Representation. At the public hearing, any person may appear on his own behalf, or may be represented by counsel or by other representatives.

##### F. Conduct of Hearings

1. Hearings shall be conducted by the presiding officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the appropriate decision. Written statements may be presented any time prior to the time the hearing file is closed. The presiding officer may afford participants an opportunity for rebuttal.

2. The presiding officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

3. Cross-examinations of witnesses shall not be permitted.

4. All public hearings shall be recorded verbatim. Copies of the transcript will be available for public inspection and purchase at the office of the administrator.

5. All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion for reasons of redundancy, be received in evidence and shall constitute a part of the hearing file.

6. The hearing file shall remain open for a period of 10 days after the close of the public hearing for submission of written comments or other materials. This time period may be extended for good cause.

7. In appropriate cases, joint public hearings may be held with other state, federal, or local agencies, provided the procedures of those hearings are generally consistent with the requirements of this regulation.

8. The procedures in Paragraphs 4 and 6 of this Subsection may be waived by the presiding officer in appropriate cases.

G. Filing of Transcript of the Public Hearing. The testimony and all evidence received at the public hearing shall be made part of the administrative record of the action. All matters discussed at the public hearing shall be fully considered in arriving at the decision or recommendation. Where a person other than the primary decision making official serves as presiding officer, such person shall submit a report summarizing the testimony and evidence received at the hearing to the primary decision making official for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

## Subchapter F. Special Areas

### §729. Special Areas

A. General. This Section shall establish procedures for the designation, utilization and management of special areas and for establishing guidelines and priorities of uses for each area.

#### B. Nominations

1. An area may be nominated for designation as a special area by any person, local government, state agency, or the secretary.

2. Areas may be nominated for any of the purposes set forth in §214.27 of the act, or for similar purposes, provided that such areas:

- a. are in the coastal zone;
- b. have unique and valuable characteristics;
- c. require special management procedures different from the normal coastal management process; and
- d. are to be managed for a purpose of regional, state, or national importance.

3. Nominations shall consist of:

- a. a statement regarding the area nominated, including, for example, its unique and valuable characteristics, its existing uses, the environmental setting, its history, and the surrounding area;
- b. a statement of the reasons for the nomination, such as any problems needing correction, anticipated results, need for special management, and need for protection or development;
- c. a statement of the social, economic, and environmental impacts of the nomination;
- d. a map showing the area nominated;
- e. a statement as to why the area nominated was delineated as proposed and not greater or lesser in size or not in another location;
- f. proposed guidelines and procedures for management of the area, including priorities of uses;
- g. an explanation of how and why the proposed management program would achieve the desired results;
- h. a statement as to how and why the designation of the area would be consistent with the state coastal management program and any affected local programs; and
- i. a statement as to why and how the designation would be in the best interest of the state.

#### C. Administrative Review

1. The secretary shall review proposals for their suitability and consistency with the coastal management program.

2. If he finds that a proposal is suitable and consistent with the coastal management program, the secretary may, with the advice and assistance of affected local programs, prepare a draft "Proposal for a Special Area." The proposal shall consist of the delineation of the area to be designated, the guidelines and procedures for management, and priorities of uses.

3. Public notice announcing a public hearing on the proposal shall be given and published in a newspaper of general circulation in the affected parishes. Copies of the proposal may be obtained from the secretary upon request and copies shall be made available for public review at the offices of the secretary, offices of local programs, and at public libraries in affected parishes. Notice and copies of the proposals shall be sent to appropriate governmental bodies.

4. After the public hearing and consideration of all comments received at or before the hearings, the secretary shall determine whether to designate the area proposed, or a part of it or an approximately similar area, and adopt the guidelines and procedures for management and priorities of uses. Public notice of the secretary's decision shall be given.

D. Gubernatorial Establishment. The governor may designate special areas and establish the guidelines and procedures for management and priorities of uses applicable in such areas.

E. Establishment of Special Area. If the state coastal zone program has not yet received federal approval, the special area designation and its management program shall go into effect upon the order of the governor. If the coastal zone program has been federally approved, the special area designation and its management program shall go into effect after federal approval of the special area as an element or amendment of the state's coastal zone program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).